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No. 682

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

MISSION ROCK COMPANY (A CORPORATION),
Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

TRANSCRIPT OF RECORD.

In Error to the Circuit Court of the United States of the Ninth Judicial Circuit, in and for the Northern District of California.

FILMER-ROLLINS CO. PRINT, 424 SANSOME STREET, S. F.

Receipts of Circuit

Court of Pulaski

1856

INDEX.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

AT LAW.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.
THE CALIFORNIA DRY DOCK COMPANY (a Corporation),
Defendant.

Complaint in Ejectment.

Now comes the said plaintiff, the United States of America, and complains of the said defendant, and for cause of action alleges:

I.

That the defendant, The California Dry Dock Company, has, at all the times in this complaint mentioned, been, and now is, a corporation, duly organized and existing under and by virtue of the laws of the State of California, and is a citizen and resident of said State and Northern District of California.

II.

That heretofore, to wit, on the 2d day of January, 1870, the said plaintiff was, and for a long time previous there-

to had been, and continuously since has been, and now is, the owner and seised in fee, and entitled to the possession, of all that certain tract of land situate in the State and Northern District of California, and described as follows, to wit:

Commencing at a point in the bay of San Francisco, State and Northern District of California, distant 3,570 feet southeasterly from the southerly corner of Brannan and Second streets, said distance being measured along the extension, southeasterly of the southwesterly line of Second street; thence in a southwesterly direction at right angles with said line of Second street extended, 500 feet; thence at right angles southeasterly 800 feet; thence at right angles northeasterly 800 feet; thence at right angles northwesterly 800 feet; thence at right angles southwesterly 300 feet to the point of commencement.

Said tract of land being a square including the rock known as Mission Rock, and containing 14.69-100 acres, more or less, and being a fractional part of the westerly half of section 11, township 2 south, range 5 west, Mount Diablo base and meridian.

III.

That afterward, to wit, on the 1st day of May, 1878, and while the plaintiff was the owner of and entitled to the possession of said tract of land as aforesaid, the said defendant wrongfully and unlawfully entered into and upon the same, and ousted and ejected the plaintiff therefrom and from the whole thereof, and from thence to the

present time has wrongfully and unlawfully withheld, and now wrongfully and unlawfully withholds possession of said premises from the plaintiff to its damage in the sum of two hundred and fifty thousand ($250,000) dollars.

IV.

That the plaintiff is informed and believes, and upon such information and belief so avers, that the value of the rents, issues, and profits of said tract of land, ever since the said wrongful and unlawful entry of the defendant thereon, has been, and now is, the sum of five thousand ($5,000) dollars per annum.

Wherefore, the said plaintiff prays for judgment against the said defendant for the possession of all of the said tract of land aforesaid, and for the sum of two hundred and fifty thousand ($250,000) dollars, for the damages aforesaid, and for one hundred and five thousand ($105,000) dollars for the value of the rents, issues, and profits aforesaid, and for costs of suit.

FRANK L. COOMBS,
United States Attorney,
Attorney for Plaintiff.

MARSHALL B. WOODWORTH,
Assistant United States Attorney,
Of Counsel.

[Endorsed]: Filed September 21, 1899. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.
THE CALIFORNIA DRY DOCK COMPANY (a Corporation),
Defendant.

Action brought in the said Circuit Court, and the Complaint filed in the office of the Clerk of said Circuit Court, in the City and County of San Francisco.

Summons.

The President of the United States of America, Greeting, to the California Dry Dock Company (a Corporation), Defendant.

You are hereby directed to appear and answer the complaint in an action entitled as above, brought against you in the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California, within ten days after the service on you of this summons, if

served within this county; or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said plaintiff will take judgment for any money or damages demanded in the complaint, as arising upon contract, or it will apply to the Court for any other relief demanded in the complaint.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 21st day of September, in the year of our Lord one thousand eight hundred and ninety-nine, and of our Independence the one hundred and twenty-fourth.

[Seal] SOUTHARD HOFFMAN,
Clerk.

By W. B. Beaizley,
Deputy Clerk.

[Endorsed]:

United States Marshal's Office,
Northern District of California,

I hereby return that I received the within writ on the 21st day of September, 1899, and personally served the same on the 22d day of September, 1899, upon The California Dry Dock Company (a corporation), by delivering to, and leaving with John Meyer, president of said The California Dry Dock Company (a corporation), said defendant named therein personally, at the city and county

of San Francisco, in said District, an attested copy thereof, together with a copy of the complaint certified to by the United States Attorney attached thereto.

San Francisco, September 22d, 1899.

JOHN H. SHINE,
United States Marshal.
By S. P. Monckton,
Office Deputy.

Filed September 22d, 1899. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States for the Ninth Circuit, Northern District of California.

THE UNITED STATES,
Plaintiff,
vs.
THE CALIFORNIA DRY DOCK COMPANY,
Defendant.

Answer.

Now comes The California Dry Dock Company, defendant in the above-entitled cause, and answering unto the complaint of the plaintiff therein avers as follows:

I.

It admits that the defendant is and has been a corporation as averred in said complaint.

II.

It denies that on the second day of January, 1870, the plaintiff was, or for a long time previous thereto had been, or continuously since or at any time since has been or now is the owner or seised in fee, or entitled to the possession of all or any part of the land described in the complaint.

III.

It denies that on the first day of May, 1878, or at any time, while the plaintiff was the owner or entitled to the possession of the said land or otherwise, it wrongfully or unlawfully entered in or upon the same, or ousted or ejected the plaintiff therefrom or the whole or any part thereof, or that from thence to the present time, or that at any time, it has wrongfully or unlawfully withheld, or that it now wrongfully or unlawfully withholds possession of said premises, or any part thereof from the plaintiff, to its damage in the sum of two hundred and fifty thousand dollars or any sum whatsoever.

The defendant further answering avers that it, the defendant, has been since the first day of May, 1878, and now is seised and the owner in fee of the said premises and in the lawful possession thereof, and that no other person or corporation is the owner thereof and that the plaintiff was not at the time alleged in the complaint, or at any time since said date, and is not now, the owner or entitled to the possession of the said premises, or any part thereof.

IV.

It denies that the value of the rents, issues, and profits of the said lands have been or are the sum of five thousand dollars per annum or any sum. And it further denies that it at any time entered unlawfully upon the said land.

Wherefore, the defendant prays judgment that the complaint be dismissed.

PAGE, McCUTCHEN, HARDING & KNIGHT,
Attorneys for Defendant.

I hereby certify that in my opinion the foregoing answer is well founded in point of law.

CHAS. PAGE,
One of the Counsel for Defendant.

[Endorsed]: Service of a copy of the within answer is hereby admitted this 3d day of November, 1899.

FRANK L. COOMBS,
Attorney for Plaintiff.

Filed November 3d, 1899. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.
THE CALIFORNIA DRY DOCK COMPANY,
Defendant.
No. 12,817.

Stipulation Waiving Trial by Jury

Now comes the plaintiff, by Frank L. Coombs, United States Attorney, and Marshall B. Woodworth, Assistant United States Attorney for the Northern District of California, its attorneys, and the defendant by Messrs. Page, McCutchen, Harding and Knight, its attorneys, and waives a jury in the above-entitled cause, and stipulate that said cause be tried by the Court sitting without a jury.

FRANK L. COOMBS,
United States Attorney, for Plaintiff.

MARSHALL B. WOODWORTH,
Assistant United States Attorney, for Plaintiff.

PAGE, McCUTCHEN, HARDING & KNIGHT,
Attorneys for Defendant.

[Endorsed]: Filed July 27th, 1900. Southard Hoffman, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE UNITED STATES,
Plaintiff,
vs.
CALIFORNIA DRY DOCK COMPANY,
Defendant.

Stipulation of Parties Substituting Defendant.

It is hereby stipulated and agreed that pending the hearing of this cause, the defendant California Dry Dock Company sold and transferred to the Mission Rock Company, a corporation, its title to the property sued for therein and that the Mission Rock Company thereupon entered into and now has the sole possession thereof. It is stipulated that the Mission Rock Company may be substituted as defendant in this action as of the date of June seventh, 1900, and that all proceedings herein be continued as against the said substituted defendant with the same force and effect as they would have against the original defendant, if no substitution had been made.

It is further stipulated that the appearance of Messrs. Page, McCutchen, Harding & Knight as attorneys for the Mission Rock Company is hereby entered and that

amended and supplemental pleadings as may be ordered by the Court be filed against the Mission Rock Company.

FRANK L. COOMBS and
MARSHALL B. WOODWORTH,
Attorneys for Plaintiff.

PAGE, McCUTCHEN, HARDING & KNIGHT,
Attorneys for Defendant.

Order Substituting Defendant.

On reading and filing the foregoing stipulation, and it appearing to the Court that since the submission of this cause all the title of The California Dry Dock Company in and to the property sued for in this cause has been sold and transferred to the Mission Rock Company, a corporation, and that said last-named company is in sole possession of the said property, and it further appearing that the Mission Rock Company is the proper party to this suit and should be substituted as defendant in place of The California Dry Dock Company, and it further appearing that said Mission Rock Company by Page, McCutchen, Harding & Knight, its attorneys, and attorneys for The California Dry Dock Company, applies for the said substitution and that the attorneys of the United States consent:

It is ordered as follows: That the Mission Rock Company be, and it is hereby, substituted as defendant in this cause in place of The California Dry Dock Company,

nunc pro tunc, as of June 7th, 1900, and that all proceedings in this cause be taken and this cause continued against the Mission Rock Company, as such substituted defendant.

It is further ordered that amended and supplemental pleadings be filed in this cause against the Mission Rock Company as defendant, and that the said defendant make answer thereto, and that the same be filed as of June 7, 1900, nunc pro tunc.

JAS. H. BEATTY,
Judge.

[Endorsed]: Filed January 11, 1901. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.
MISSION ROCK COMPANY (a Corporation), Substituted for The California Dry Dock Company (a Corporation),
Defendant.

Amended and Supplemental Complaint.

Now comes the plaintiff, the United States of America, and by leave of Court first had and obtained, files this its amended and supplemental complaint, and alleges:

I.

That the defendant, Mission Rock Company, is, and at all times since a period anterior to June 6th, 1900, has been a corporation organized and existing under and by virtue of the laws of the State of California and is a citizen and resident of said State and Northern District of California.

II.

That heretofore, to wit, on the 2d day of January, 1870, the said plaintiff was, and for a long time previous thereto had been, and continuously since has been and now is, the owner and seised in fee, and entitled to the possession, of all that certain tract of land situate in the State and Northern District of California and described as follows, to wit:

Commencing at a point in the bay of San Francisco, State and Northern District of California, distant 3,570 feet southeasterly from the southerly corner of Brannan and Second streets, said distance being measured along the extension, southeasterly of the southwesterly line of Second street; thence in a southwesterly direction at right angles with said line of Second street, extended, 500 feet; thence at right angles southeasterly 800 feet; thence at right angles northeasterly 800 feet; thence at right angles northwesterly 800 feet; thence at right angles southwesterly 300 feet to the point of commencement.

Said tract of land being a square including the rock known as Mission Rock and containing 14 69-100 acres.

more or less, and being a fractional part of the westerly half of section 11, township 2 south, range 5 west, Mount Diablo base and meridian.

III.

That afterards, to wit, on the 1st day of May, 1878, and while the plaintiff was the owner of and entitled to the possession of said tract of land as aforesaid, the said The California Dry Dock Company wrongfully and unlawfully entered into and upon the same, and ousted and ejected the plaintiff therefrom and from the whole thereof, and from thence up to the 6th day of June, 1900, wrongfully and unlawfully withheld possession of the said premises, from the plaintiff to its damage in the sum of two hundred and fifty thousand (250,000) dollars.

That prior to said sixth day of June, 1900, to wit, on or about the 21st day of September, 1899, this plaintiff brought in this court its certain action of ejectment against the said The California Dry Dock Company for the recovery of the possession of the premises aforesaid and for damages as aforesaid, which said action was on the said sixth day of June, 1900, still pending and undetermined in this court.

That on said sixth day of June, 1900, the said The California Dry Dock Company executed a written instrument of deed and delivered the same to the Mission Rock Company, defendant herein, wherein and whereby it purported to convey to the said defendant all of the lands and premises hereinbefore described and sued for by this plaintiff, and the said defendant thereupon entered into

possession of the said premises and now wrongfully and unlawfully withholds the same from the plaintiff to its damage in the sum aforesaid.

IV.

That heretofore, to wit on the —— day of December, 1900, this Honorable Court on stipulation of the parties in the said cause originally pending herein, and on the request and motion of counsel of the Mission Rock Company, then and there duly authorized to enter an appearance for the Mission Rock Company, defendant, made and entered an order in said cause substituting the Mission Rock Company as defendant in place of The California Dry Dock Company, previously defendant therein as aforesaid, and ordering that all further proceedings in said cause be continued against said Mission Rock Company, in place of the California Dry Dock Company, and that the plaintiff be authorized to file in said cause an amended and supplemental complaint against the Mission Rock Company, defendant, substituted as aforesaid, and that the said defendant enter its appearance therein, and answer the said amended and supplemental complaint.

V.

That the plaintiff is informed and believes, and upon such information and belief so avers, that the value of the rents, issues, and profits of said tract of land, ever since the said wrongful and unlawful entry of the defendant thereon, has been, and now is, the sum of five thousand (5,000) dollars per annum.

Wherefore the said plaintiff prays for judgment against the said defendant for the possession of all the said tract of land aforesaid, and for the sum of two hundred and fifty thousand (250,000) dollars for the damages aforesaid, and for one hundred and five thousand (105,000) dollars, for the value of the rents, issues and profits aforesaid, and for costs of suit.

FRANK L. COOMBS,
United States Attorney,
And MARSHALL B. WOODWORTH,
Assistant United States Attorney.

[Endorsed]: Service of the within amended and supplemental complaint by copy admitted this 27th day of December, 1900.

PAGE, McCUTCHEN, HARDING & KNIGHT,
Attorneys for Defendant.

Filed January 11, 1901, nunc pro tunc as of June 7, 1900. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States, for the Ninth Circuit, Northern District of California.

THE UNITED STATES,
Plaintiff,
vs.
MISSION ROCK COMPANY (a Corporation), Substituted for The California Dry Dock Company (a Corporation),
Defendant.

Answer to Amended and Supplemental Complaint.

Now comes the Mission Rock Company, defendant in the above-entitled cause, substituted for The California Dry Dock Company, and answering unto the amended and supplemental complaint of the plaintiff avers as follows:

I.

It admits that the defendant is and has been a corporation as averred in the complaint.

II.

It denies that on the second day of January, 1870, the plaintiff was, or for a long time previous thereto had been, or continuously since or at any time since has been or now is the owner or seised in fee, or entitled to the possession of all or any part of the land described in the complaint.

III.

It denies that on the first day of May, 1878, or at any time, while the plaintiff was the owner or entitled to the possession of the said land or otherwise, The California Dry Dock Company unlawfully entered in or upon the same, or ousted or ejected the plaintiff therefrom, or the whole or any part thereof, or that the said The California Dry Dock Company from thence up to the 6th day of June, 1900, or at any time, wrongfully or unlawfully withheld possession of the said premises, or any part therefrom, from the plaintiff to its damage in the sum alleged, or in any sum.

The defendant admits that prior to the said sixth day of June, 1900, to wit, on or about the 21st day of September, 1899, the plaintiff brought in this court the action in the amended and supplemental complaint described and that said action was on the sixth day of June, 1900, pending and undetermined in this court, and it admits that on said day The California Dry Dock Company executed and delivered to this defendant the instrument of conveyance in said complaint described and that the defendant thereupon entered into possession of the said premises and that it now withholds the same from the plaintiff; but it denies that it withholds the same to the damage of the plaintiff in the sum alleged or in any sum.

The defendant further avers that the said The California Dry Dock Company, grantor of this defendant was from the first day of May, 1878, and up to the sixth day of June, 1900, seised and owner in fee of the premises

sued for, and that since said date this defendant, as its grantee, has been and now is seised and owner in fee and in the lawful possession thereof, and that no other person or corporation is the owner thereof, and that the plaintiff was not at the time alleged in the amended and supplemental complaint or at any time since said date, and is not now the owner or entitled to the possession of the said premises, or any part thereof.

IV.

It denies that the value of the rents, issues, and profits of the said lands have been or are the sum of five thousand dollars per annum or any sum, and it further denies that it at any time entered unlawfully upon the said land.

Wherefore, it prays judgment that plaintiff's action be dismissed.

PAGE, McCUTCHEN, HARDING & KNIGHT,
Attorneys for Defendant.

[Endorsed]: Service of a copy of the within answer is hereby admitted this 10th day of January, 1901.

MARSHALL B. WOODWORTH and
FRANK L. COOMBS,
Attorneys or Plaintiff.

Filed January 11, 1901, nunc pro tunc as of June 7, 1900. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE UNITED STATES,
Plaintiff.

vs.

MISSION ROCK COMPANY, Substituted for California Dry Dock Company,
Defendant.

Findings.

The above cause having come on regularly to be heard before the Court, a jury having been waived, the Court having heard and considered the pleadings and the evidence, hereby files its findings of fact and conclusions of law:

I.

The defendant, Mission Rock Company, is and since a date anterior to June 6, 1900, was a corporation organized and existing under the laws of the State of California and pending the hearing of this cause, became, by virtue of a deed of grant, bargain and sale from The California Dry Dock Company, dated June 6th, 1900, the owner of all the title and interest of The California Dry Dock Company in and to the premises in controversy, and thereupon entered into and now holds the possession of the same.

On request of the Mission Rock Company and proof of the fact that the said Company had acquired the interest of The California Dry Dock Company in the lands sued for and by consent of the plaintiff, this Court made an order substituting the Mission Rock Company for The California Dry Dock Company as defendant and continuing this action against said Mission Rock Company as defendant.

II.

At the date of the admission of the State of California into the Union, the premises sued for consisted of two rocks or islands adjacent to one another and projecting above the plane of ordinary high water in the Bay of San Francisco, the larger of which rose to a height of more than twenty and less than forty feet above such high water. Also of other lands contiguous thereto and surrounding said rocks or islands which were completely submerged and over which the daily tides continuously flowed and ebbed. The rocks or islands referred to are laid down on the chart in this cause marked Exhibit "A."

III.

The areas of these rocks or islands above ordinary high-water mark, at the time of the admission of the State of California into the Union, were as follows: The one on the chart called "Mission Rock" had an area of fourteen one-hundredths (14-100) of an acre; the other had an area of one one-hundredth (1-100) of an acre. These rocks or islands rose abruptly out of the Bay of San Francisco. Their sides to the extent that they were

covered and uncovered by the flow and ebb of the tide, varied from ten to twenty-five feet; depending on their steepness. Both rocks were barren, without soil or water and were of no value for purposes agricultural or mineral. They lay at a distance of about half of a mile from the then shore line of that part of the bay upon which the city of San Francisco fronted. Navigable water divided and still divide the lands sued for from the mainland and surrounded and now surround them.

IV.

The lands described in the complaint were not, at the date of the admission of the State of California into the Union, within the boundaries of any valid private or pueblo grant of lands of the Spanish or Mexican Governments.

V.

No approved plat of the exterior limits of the city of San Francisco, as provided by the terms of section 5 of the act of July 1, 1864, (13 Stat. 332), has been filed or rendered to the general land office of the United States, or of the State of California. The lands sued for in this action are within such exterior limits.

VI.

On the thirteenth day of January, 1899, the President of the United States, purporting to act in conformity with the act of July 1, 1864 already referred to, issued the following order:

"EXECUTIVE MANSION.

"January 13, 1899.

"It is hereby ordered that Mission Island and the small island southeast thereof, designated on the official plat on file in the general land office, approved October 12, 1898, as lots 1 and 2 of section 11, township 2 south, range 5 west, Mount Diablo meridian, California, containing, according to the plat, fourteen one-hundredths of an acre and one one-hundredth of an acre, respectively, be, and they are hereby, declared as permanently reserved for naval purposes.

"WILLIAM McKINLEY."

VII.

On the —— day of March, 1864, the United States surveyor general for the State of California extended the public surveyors so as to comprehend and include the rocks or islands and the lands in controversy in the present suit.

VIII.

On April 4th, 1870, the governor of the State of California approved an act of the legislature of the State entitled "An act to provide for the sale and conveyance of certain submerged lands in the city and county of San Francisco to Henry B. Tichenor," which act was printed in the Statutes of California for the years 1870-1871, at page 801, is hereby referred to and made part hereof.

The lands therein described include the lands sued for in this action.

On the 11th day of July, 1872, the State of California, in conformity with said act, issued its patent for the said

lands to said Henry B. Tichenor, purporting to convey the same to him. Said patent was duly recorded in liber 1 of Records of Patents, page 66.

After execution of the said patent, the said Tichenor executed and delivered a deed of grant, bargain and sale, dated May 1st, 1878, purporting to convey the said lands to the California Dry Dock Company, which thereafter on the 6th day of June, 1900, executed and delivered to the Mission Rock Company, the defendant, a like deed to the said lands. The last-named company has not since said date conveyed to any person or corporation the said lands.

IX.

The California Dry Dock Company, upon going into possession of said lands so conveyed undertook the improvement of the same by filling in portions of the submerged lands immediately around and contiguous to said islands or rocks, with many thousands of tons of rock, thus increasing the available area of said lands to about four acres, upon which extensive warehouses were built by it and wharves erected for the accommodation of shipping.

Since the issuance of the state patent hereinbefore referred to, the patentee thereof up to May 1st, 1878, The California Dry Dock Company from said time to the 6th day of June, 1900, and the defendant from said last named date to the present time, have been in continuous and uninterrupted possession of the said lands, using the same and the improvements thereon for commercial purposes, and claiming to be the absolute owner thereof.

X.

On April 7th, 1890, Col. Geo. H. Mendell, then in charge of the corps of engineers of the United States Army on the Pacific Coast, caused to be served on the California Dry Dock Company the following notice:

"United States Engineer Office,
"No. 533 Kearny Street,
"San Francisco, Cal., April 7th, 1890.

"Captain Oliver Eldridge,
President California Dry Dock Company, 303 California Street, San Francisco, Cal.

"Sir:—Under the provisions of section 12 of the River and Harbor Act of August 11th, 1888 (a copy of which is enclosed), a board of engineer officers was appointed to establish the harbor lines of San Francisco harbor and adjacent waters. There is transmitted herewith, for your information, a map, upon which are shown the limiting lines of wharves and the line beyond which no deposits shall hereafter be made, at Mission Rock, as established by the board and approved by the Secretary of War March 24th 1890.

"Very respectfully,
"G. H. MENDELL,
"Colonel, Corps of Engineers."

The limits referred to in the above letter and delineated on the map, are in effect the limits of "Mission Rock" as improved at that time.

CONCLUSIONS OF LAW.

Upon the foregoing facts, I find that the title to the lands described in the complaint is in the United States and that it is entitled to judgment for the possession thereof. Let judgment be entered accordingly.

JAS. H. BEATTY,
Judge.

Agreed to.

PAGE, McCUTCHEN, HARDING & KNIGHT,
Attorneys for Defendant.

FRANK L. COOMBS and
MARSHALL B. WOODWORTH,
Attorneys for Plaintiff.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE UNITED STATES,
Plaintiff,
vs.
MISSION ROCK COMPANY, Substituted for California Dry Dock Company,
Defendant.

Stipulation and Supplemental Finding.

It is hereby stipulated and agreed by and between counsel for the respective parties hereto that the following supplemental finding of fact may be, and is hereby

made part of the findings heretofore signed by Hon. James H. Beatty and agreed to by counsel for the respective parties, just as if the same had been originally incorporated in said findings, signed and agreed to as aforesaid; and said parties hereby expressly waive any and all manner of objection to said supplemental finding or to any other matter or thing connected therewith.

Dated January 10, 1901.

FRANK L. COOMBS,
United States Attorney, for Plaintiff.

PAGE, McCUTCHEN, HARDING & KNIGHT,
Attorneys for Defendant.

Said supplemental finding of fact as hereby agreed to is as follows:

The title of the United States, as successor of the Mexican Republic under the Treaty of Guadalupe Hidalgo, to the land in controversy, has not since been divested by patent or other conveyance, and the title thereto is still in the United States, unless the same passed to the State of California by virtue of the admission of the State under the act of Congress, or unless the United States relinquished title thereto under subsequent acts of Congress.

JAS. H. BEATTY,
Judge.

[Endorsed]: Filed January 23, 1901. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.
MISSION ROCK COMPANY (a Corporation), Substituted for California Dry Dock Company (a Corporation),
Defendant.
No. 12,817.

Judgment on Findings.

This cause came on regularly for trial upon the third day of August, 1900, being a day in the July, 1900, term of said Court, before the Court sitting without a jury, a trial by jury having been duly waived by stipulation of the attorneys for the respective parties filed herein. Frank L. Coombs Esq., United States Attorney, and Marshall B. Woodworth, Esq., Assistant United States Attorney, appeared upon behalf of the plaintiff and Charles Page, Esq., appeared upon behalf of the defendant, and thereupon evidence oral and documentary upon behalf of the respective parties was introduced and closed, and the cause after arguments of the attorneys, was submitted to

the Court for consideration and descision. And the Court, after due deliberation having filed its findings in writing and ordered that judgment be entered herein in accordance therewith:

Now, therefore, by virtue of the law and by reason of the findings aforesaid, it is considered by the Court that the United States of America, plaintiff herein, have and recover of and from Mission Rock Company, a corporation, defendant herein, the possession of all that certain tract of land situate in the State and Northern District of California, and described as follows, to wit:

Commencing at a point in the bay of San Francisco, State and Northern District of California, distant 3,570 feet southeasterly from the southerly corner of Brannan and Second streets, said distance being measured along the extension, southeasterly of the southwesterly line of Second street; thence in a southwesterly direction at right angles with said line of Second street, extended, 500 feet; thence at right angles southeasterly 800 feet; thence at right angles northeasterly 800 feet; thence at right angles northwesterly 800 feet; thence at right angles southwesterly 300 feet to the point of commencement.

Said tract of land being a square including the rock known as Mission Rock and containing 14 69-100 acres, more or less, and being a fractional part of the westerly

half of section 11, township 2 south, range 5 west, Mount Diablo base and meridian.

And it is further considered and adjudged that said plaintiff recover from said defendant its costs in this behalf expended taxed at $48.40.

Judgment entered January 23d, 1901.

SOUTHARD HOFFMAN,
Clerk.

A true copy.

Attest:

[Seal] SOUTHARD HOFFMAN,
Clerk.

By W. B. Beaizley,
Deputy Clerk.

[Endorsed]: Filed January 23, 1901. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Northern District of California.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.
MISSION ROCK COMPANY (a Corporation),
Defendant.
No. 12,817.

Certificate to Judgment-Roll.

I, Southard Hoffman, Clerk of the Circuit Court of the United States, for the Ninth Judicial Circuit, Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the above-entitled action.

Attest my hand and the seal of said Circuit Court, the 23d day of January 1901.

[Seal] SOUTHARD HOFFMAN,
Clerk.
By W. B. Beaizley,
Deputy Clerk.

[Endorsed]: Judgment-roll. Filed January 23, 1901. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States, Northern District of California.

THE UNITED STATES,
Plaintiff,
vs.
CALIFORNIA DRY DOCK COMPANY,
Defendant.

Opinion.

Frank L. Coombs, United States Attorney, and Marshall B. Woodworth, Assistant United States Attorney, for Plaintiff.

Page, McCutchen, Harding & Knight, for Defendant.

What has long been known as "Mission Rock," situated in the bay of San Francisco, about one-half mile east of the shore of the land upon which the city of San Francisco is situated, consists of two islands of rocks projecting above high tide, having areas respectively of 14-100 and 1-100 acres. So far as known they have always been barren rocks with shores so steep that they are surrounded with very little land or rock that is uncovered by the tide. California's admission act of September 9, 1850, was similar in its provisions to those of the admission acts of other states. Claiming the title through

such admission act, to the submerged lands surrounding these rocks, the state by its legislature, on April 4, 1870, authorized the sale of the same to one Tichenor, and he having complied with all the conditions prescribed, did on July 11, 1872, receive from the state a patent for a tract of eight hundred feet square, surrounding these rocks "containing 14-3500 acres, exclusive of said rocks." By mesne conveyances the defendant now has whatever title to the premises the State could convey. The defendant has by the deposit of rock and other material filled in the space surrounding these rocks to such extent that the area above water is now, as shown by a map introduced by defendant and marked Exhibit No. 1, 3 and 9-10 acres including as is understood, the area of the original islands or rocks. The plaintiff brings this action for the possession of all the area conveyed by the State, and also that of the islands, being a total of 14 and 69-100 acres.

The question is, whether California had any title to what it attempted to convey. It cannot be doubted that "tide lands" become upon the admission of a State its property. It is sufficient to refer to but one of the many adjudications. Illinois Central Railroad vs. Illinois, 146 U. S. 435, says: "It is the settled law of this country that the ownership of and dominion and sovereignty over lands covered by tide waters within the limits of the several States belong to the respective States within which they are found, with the consequent right to use or dispose of any portion thereof when that can be done without substantial impairment of the interest of the public

in the waters, and subject always to the paramount right of Congress to control their navigation so far as may be necessary for the regulation of commerce with foreign nations and among the States." If any of the area surrounding these rocks is within the term "tide lands," it is evident from the testimony that but a small portion thereof is. The line around these islands to which the low tide recedes is not clearly fixed by the evidence. The only witness examined on this question, aided by plaintiff's maps, Exhibits "H" and "G," said there was originally "not very much" land around these rocks uncovered by the ebbing tide; that it "may vary from 10 to 25 feet, depending upon the steepness of the slope of the rock. That, however, is a mere estimate," Defendant's said Exhibit No. 1 has upon it an irregular line marked "Line of filling about level at low water," within which is included a total area of 3 and 9-100 acres, from which deducting that of the islands, 15-100 acres leaves 2 and 94-100 acres, which admitting defendant's showing as correct, is the maximum area which the State could convey. The State did attempt to convey, what under no theory of the law, could be termed tide lands, but which it conveyed as submerged lands. If it could do so, no reason exists why it may not convey as submerged lands the entire bottom of San Francisco bay.

Plaintiff claims that "tide lands" are only those adjoining the main land on the sea, on bays, inlets and arms of the sea, and that they do not include those lands surrounding islands, especially those in a bay. So far as my observation goes the government has always acquired

and retained the islands in the bays of important seaports for fortification and other governmental purposes. If the State can hold as tide lands a strip around such islands the Government would be absolutely excluded from its island possessions except by paying tribute to the State or its grantees. The defendant's counsel says the Government may meet such an emergency through its power to control the navigable waters for commercial purposes, and that the purchaser of such tide or submerged lands "would take the title, subject always to the control of the United States, over the waters covering them." This would be a circuitous way by which to protect the public or Government interests as well as through the exercise of arbitrary power; that it may be done the authorities seem to justify, but the same authorities also hold that the State can claim title to convey such tide lands only "when that can be done without substantial impairment of the interest of the public—of the Government—to surround the islands in a bay, which it needs, with an adverse title. Plaintiff has cited a number of authorities in support of its claim that tide lands do not pertain to the shores of islands such as these, but they are not decisive of the question because it was not directly involved in any of the cases so far as I can observe.

As it has been held that tide lands cannot be controlled by the State to the detriment of the public welfare; as the islands within the bay of an important seaport are of great value to the public and to the Govern-

ment, and as it is absolutely necessary that the approach to them must be unobstructed to make them available, the Court should hesitate to allow the claim made by the defendant unless supported by some clear statutory or judicial authority, and in the absence of either that is satisfactory, it must be and is held that the lands surrounding these islands were not within the denomination of tide lands, and that the State had no title thereto to convey.

The act of Congress approved July 1, 1864, 13 Stat. 332, by the fifth section, provided for the relinquishment to San Francisco of all lands within its limits, but it accepted from the operation of such relinquishment such lands as may be designated by the President within one year after the rendition to the general land office by the surveyor general of an approved plat of the exclusive limits of San Francisco. No such plat has yet been sent to the general land office, but the President did on January 13, 1889, designate these islands as permanently reserved for naval purposes thereby preserving to the Government the reservation of its rights provided by the statute.

As the very great importance of this case will lead to its final determination by higher courts, it is deemed unnecessary to enter largely into the discussion of the questions involved, and without further suggestion I content myself with the statement of my conclusion in favor of

judgment of possession for the plaintiff, which is accordingly ordered.

Dated this 11th day of December, 1900.

BEATTY,

Judge.

[Endorsed]: Filed December 14, 1900. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the United States Circuit Court, in and for the Ninth Circuit and Northern District of California.

THE UNITED STATES,
Plaintiff,
vs.
MISSION ROCK COMPANY, Substituted in place of California Dry Dock Company,
Defendant.

Bill of Exceptions.

Be it remembered that on the signing by the Court of the findings in the above-entitled cause and the order of judgment therein in favor of the plaintiff, the defendant by its attorneys duly assented to the facts of the cause as found by the Court and filed herein as its finding, but excepted to the ruling of the Court thereon declaring and deciding that judgment thereon should be entered in

favor of the plaintiff and not in favor of defendant as requested by it. And whereas the said exception does not otherwise appear of record, I have hereunto set my hand and seal this 2d day of January, 1901.

JAS. H. BEATTY.

We hereby agree to the correctness of the foregoing bill of exceptions.

FRANK L. COOMBS and
MARSHALL B. WOODWORTH,
Attorneys for Plaintiff.

PAGE, McCUTCHEN, HARDING & KNIGHT,
Attorneys for Defendant.

[Endorsed]: Filed January 23, 1901. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the United States Circuit Court, in and for the Ninth Circuit, Northern District of California.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.
MISSION ROCK COMPANY (a Corporation),
Defendant.

Petition for Writ of Error.

Mission Rock Company, defendant in the above-entitled action, feeling itself aggrieved by the decision and judg-

ment of this Honorable Court entered in this cause on the 23d day of January, A. D. 1901, does through and by its attorneys, Page, McCutchen, Harding & Knight, respectfully petition and pray this Court for the allowance of a writ of error from said decision and judgment to the United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, under and according to the laws of the United States in that behalf made and provided; and also that an order may be made fixing the amount of security and bond which defendant should give and furnish upon said writ of error, and that upon the giving of said security and bond which defendant should give and furnish upon said writ of error, and that upon the giving of said security and bond all further proceedings in this court be suspended and stayed until the determination of said writ of error by said Circuit Court of Appeals in and for the Ninth Judicial Circuit, and prays that a transcript and record of the proceedings in the cause, duly authenticated, may be transmitted to said Circuit Court of Appeals.

Your petitioner and appellant herewith presents and files with the clerk of this Honorable Court its assignment of errors.

PAGE, McCUTCHEN, HARDING and KNIGHT,
Attorneys for Petitioner and Appellant.

Order Allowing Writ of Error.

It is ordered that the prayer of said petitioner be allowed and that said writ of error issue as prayed for.

WM. W. MORROW,
Judge.

[Endorsed]: Filed January 23, 1901. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States, for the Ninth Circuit, Northern District of California.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.
MISSION ROCK COMPANY,
Defendant.

Assignment of Errors.

Now comes the defendant, Mission Rock Company, and files its assignment of errors in the above-entitled cause as follows, to wit:

1. That the Circuit Court erred in its decision and judgment that, upon the findings of fact made by it, the plaintiff was entitled to judgment against the defendant for the recovery of the premises described in the complaint.

2. That the Circuit Court erred in its decision and judgment that, upon the findings of fact made by it, the defendant was not entitled to judgment against the plaintiff.

3. That the Circuit Court erred in deciding that the title to that portion of the lands described in the complaint which was constantly covered by the tidal waters of the bay of San Francisco remained and was, after the admission of the State into the Union, in the United States and did not vest in the State of California.

4. That the Circuit Court erred in deciding that that portion of the lands described in the complaint and which are shown by the findings to have been and to be above the line of ordinary high water mark, were and are lands the title whereof was and remained, after the admission of the State of California into the Union, in the United States and not in the State of California.

5. That the Circuit Court erred in its decision and judgment holding and adjudging that the title to that portion of the lands described in the complaint which were constantly submerged by the tidal waters of the bay of San Francisco did not vest in the State of California on admission of the State into the Union.

6. That the Circuit Court erred in its decision and judgment holding and adjudging that the title to that portion of the lands described in the complaint which by the findings and evidence was shown to lie above the line of ordinary high tide, did not, on the admission of the State of California into the Union, vest in the said State.

7. That the Circuit Court erred in its decision and

judgment holding and adjudging that under the act of July 1, 1864 (13 Stat. 332) relinquishing to the city of San Francisco the lands described in said act, the United States excepted from such relinquishment the lands described in the complaint or any portion thereof.

8. That the Circuit Court erred in holding and adjudging that it was within the power of the President under the said act to designate the said lands, or any part of them, as excepted from the relinquishment made in said act.

9. That the Circuit Court erred in holding and adjudging that the title to the said lands described in the complaint did not vest under said act in the city of San Francisco.

10. That the Circuit Court erred in deciding and holding that after relinquishment of the title to said lands by the United States by said act, the title conveyed by said act was divested by the act of the President referred to in the findings.

11. That the Circuit Court erred in deciding and holding that the executive order of the President excepted from the grant to San Francisco more than the specific acreage of the lands sued for lying above high-water mark stated in the said order.

12. That the Circuit Court erred in deciding and holding that all of said lands in the complaint described were not part of the lands covered by navigable waters of the State of California.

13. That the Circuit Court erred in deciding and holding that the said lands described as lying above high-

water mark were lands which did not vest in the State on her admission into the Union.

14. That the Circuit Court erred in deciding and holding that an action of ejectment would lie for the recovery of lands the title to which had been fully relinquished by the United States in 1864 in favor of the city of San Francisco, subject to a right of subsequent reservation by the President.

15. That the Circuit Court erred in holding and deciding that the reservation in the said act of 1864 was not void, and that by the act of the President, nearly forty years later, reserving said lands, the title thereto again became vested in the United States.

PAGE, McCUTCHEN, HARDING and KNIGHT,
Attorneys for Defendant.

[Endorsed]: Filed January 23, 1901. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the United States Circuit Court, in and for the Ninth Circuit, Northern District of California.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

MISSION ROCK COMPANY (a Corporation),

Defendant.

Order Staying Proceedings.

The defendant, Mission Rock Company, having this day filed its petition for a writ of error from the decision and judgment of this Court entered herein, to the United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, and also praying that an order be made fixing the amount of security which defendant should give and furnish upon said writ of error, and that upon the giving of said security, all further proceedings of this Court be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, and said petition having this day been allowed:

Now, therefore, it is ordered that upon the said defendant, Mission Rock Company, filing with the clerk of this court a good and sufficient bond in the sum of twenty-

five thousand dollars, said bond to be approved by the Court, that all further proceedings in this court be, and they are hereby suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals.

Dated January 23, 1901.

WM. W. MORROW,
Judge.

[Endorsed]: Filed January 23, 1901. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

Supersedeas and Cost Bond on Writ of Error.

Know all men by these presents, that Mission Rock Company, a corporation, as principal, and Pacific Surety Company, a corporation, as surety, are held and firmly bound unto the United States of America, in the full and just sum of twenty-five thousand dollars, to be paid to the said the United States of America, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 30th day of January, in the year of our Lord one thousand nine hundred and one.

Whereas, lately, in the Circuit Court of the United States, in and for the Ninth Circuit, Northern District of California, in a suit pending in said court between the United States of America, plaintiff, and Mission Rock Company, a corporation, defendant, judgment was ren-

dered and entered on the 23d day of January, A. D. 1901, against the said defendant Mission Rock Company, a corporation, and in favor of said plaintiff, and the said defendant, Mission Rock Company, a corporation, having obtained from the said court its writ of error to reverse the judgment in the aforesaid suit, and a citation directed to the above-named plaintiff, citing and admonishing it to appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California:

Now, the condition of the above obligation is such that if the said Mission Rock Company, a corporation, defendant (plaintiff in error), shall prosecute the said writ to effect, and answer all damages and costs, and all sums of money that may be recovered for the use and detention of the property and the costs of suit and just damages for delay, if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[Corporate Seal of Mission Rock Company.]

MISSION ROCK COMPANY.
By WM. BABCOCK,
President.
W. F. RUSSELL,
Secretary.

PACIFIC SURETY COMPANY.

[Corporate Seal of Pacific Surety Company.]

By WALLACE EVERSON,
President.
A. P. REDDING,
Secretary.

[Internal Revenue Stamps to the Amount of 62½ c. Attached and Canceled.]

United States of America,
State of California,
City and County of San Francisco. } ss.

Personally appeared before me, A. P. Redding, on this thirtieth day of January, one thousand nine hundred and one, known to me to be the secretary of the Pacific Surety Company, the corporation described in and which executed the annexed bond of Mission Rock Company, defendant, as surety thereon, and who, being by me duly sworn, deposes and says: That he resides at Menlo Park in the State of California; that he is the secretary of the said Pacific Surety Company, and knows the corporate seal thereof; that said company is duly and legally incorporated under the laws of the State of California; that said company has complied with the provisions of the act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of Mission Rock Company, defendant, is the corporate seal of the said Pacific Surety Company, and was thereto affixed by order and authority of the board of directors of said company; that he signed his name thereto by like order and authority as secretary of said company; that he is acquainted with Wallace Everson and knows him to be the president of said company; that the signature of said Wallace Everson subscribed to said bond is in the genuine handwriting of said Wallace Everson, and was thereto subscribed by order and authority of said board of directors, and in

the presence of said deponent; and that the assets of said company, unincumbered and liable to execution, exceed its claims, debts and liabilities, of every nature whatsoever, by more than the sum of two hundred and fifty thousand dollars ($250,000.00).

[Corporate Seal of Pacific Surety Company.] A. P. REDDING.

Sworn to, acknowledged before me, and subscribed in my presence this 30th day of January, 1901.

[Notarial Seal] O. A. EGGERS,

Notary Public in and for the City and County of San Francisco, State of California.

Whereas, the Pacific Surety Company, a corporation duly incorporated under the laws of the State of California, has deposited with me its charter or articles of incorporation and the statement required by section 3 of an act of Congress approved August 13, 1894, entitled, "An act relative to recognizances, stipulations, bonds and undertakings, and to allow certain corporations to be accepted as surety thereon"; and has satisfied me that it has authority under its charter to do the business provided for in said act; that it has a paid-up capital of not less than $250,000 in cash or its equivalent, and that it is able to keep and perform its contracts:

Now, therefore, the said Pacific Surety Company is hereby granted authority to do business under said act in the said State of California, and is also granted authority to do business under said act beyond the limits of said State in any Judicial District of the United States in

which it shall first have appointed an agent conformably to the provisions of section 2 of said act.

JOHN W. GRIGGS,

Attorney General.

Department of Justice, Washington, D. C., November 25, 1898.

[Seal]

Department of Justice, Washington, D. C.,

April 18, 1900.

[10 c. Int. Rev. Stamp Hereto Attached and Canceled.]

The annexed is a true copy of an original authorization to do business, issued by the Attorney General under the act of Congress approved August 13, 1894.

Witness my hand and seal of the Department.

[Seal of Department of Justice.]

CECIL CLAY,

Chief Clerk.

[Endorsed]: The form of the within bond and the sufficiency of the surety approved this 30th day of January, 1901.

WM. W. MORROW,

Judge.

Filed January 30, 1901. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.
MISSION ROCK COMPANY (a Corporation), Substituted for California Dry Dock Company,
Defendant.
No. 12,817.

Clerk's Certificate to Record.

I, Southard Hoffman, Clerk of the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California, do hereby certify the foregoing forty-six (46) written pages, numbered from 1 to 46 inclusive, to be a full, true and correct copy of the record and of the proceedings in the above and therein entitled cause, as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is $28.00, and that said amount was paid by the attorneys for the defendant above-named.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this 6th day of February, A. D. 1901.

[Seal] SOUTHARD HOFFMAN,

Clerk of United States Circuit Court, Ninth Judicial Circuit, Northern District of California.

[Ten Cent U. S. Int. Rev. Stamp. Canceled.]

Writ of Error.

UNITED STATES OF AMERICA—ss.

The President of the United States, to the Honorable, the Judges of the Circuit Court of the United States for the Ninth Circuit, Northern District of California, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between Mission Rock Company, a corporation, defendant and plaintiff in error, and United States of America, plaintiff and defendant in error, a manifest error hath happened, to the great damage of the said Mission Rock Company, a corporation, plaintiff in error, as by its complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if

judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the 12th day of February next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the 30th day of January, in the year of our Lord one thousand nine hundred and one.

[Seal] SOUTHARD HOFFMAN,

Clerk of the Circuit Court of the United States, for the Ninth Circuit, Northern District of California.

Allowed by:

WM. W. MORROW,

Judge.

Service of within writ and receipt of a copy thereof is hereby admitted this 30th day of January, A. D. 1901.

FRANK L. COOMBS and
MARSHALL B. WOODWORTH,
Attorneys for Defendant in Error.

The answer of the Judges of the Circuit Court of the United States of the Ninth Judicial Circuit, in and for the Northern District of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

SOUTHARD HOFFMAN,

Clerk.

[Endorsed]: No. 12,817. Circuit Court of the United States, Ninth Circuit, Northern District of California. Mission Rock Company (a Corporation), Plaintiff in Error, vs. United States of America, Defendant in Error. Writ of Error. Filed January 30, 1901. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

Citation.

UNITED STATES OF AMERICA—ss.

The President of the United States, to the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, on the 12th day of February next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States, Ninth Circuit, Northern District of California, in a certain action numbered 12,817, wherein Mission Rock Company, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable WILLIAM W. MORROW, Judge of the United States Circuit Court, Ninth Circuit, Northern District of California, this 30th day of January, A. D. 1901.

WM. W. MORROW,
Judge.

Service of within citation and receipt of a copy thereof is hereby admitted this 30th day of January, 1901.

FRANK L. COOMBS and
MARSHALL B. WOODWORTH,
Attorneys for Defendant in Error.

[Endorsed]: No. 12,817. Circuit Court of the United States, Ninth Circuit, Northern District of California. Mission Rock Company (a Corporation), Plaintiff in Error, vs. The United States of America, Defendant in Error. Citation. Filed January 30, 1901. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

[Endorsed]: No. 682. In the United States Circuit Court of Appeals for the Ninth Circuit. Mission Rock Company (a Corporation), Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. In Error to the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the Northern District of California.

Filed February 6, A. D. 1901.

F. D. MONCKTON,

Clerk.

No. 682.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

MISSION ROCK COMPANY,
Defendant and Plaintiff in Error.

vs.

THE UNITED STATES,
Plaintiff and Defendant in Error.

Brief on Behalf of Plaintiff in Error.

PAGE, McCUTCHEN, HARDING & KNIGHT,
Attorneys for Plaintiff in Error.

JOHN GARBER,
Of Counsel.

PERNAU BROS. PRINT 543 CLAY ST., S. F.

IN THE

United States Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

MISSION ROCK COMPANY, Plaintiff in Error, vs. THE UNITED STATES, Defendant in Error.	No. 682.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

The facts of this case have been specially found by the Court below. There is no dispute about their correctness. They are as follows:

The lands sued for in this action lie in the Bay of San Francisco, about half a mile from the original shore line of the peninsula on which San Francisco stands. All of the lands, fourteen acres, less a piece, which if rectagonal, would be seventy-eight feet square, generally known as "Mission Rock" and another adja-

cent piece, twenty feet square, are submerged lands over which the tide waters continuously ebb and flow. The excepted pieces are rocks, the larger of which rises above high tide between twenty and forty feet. These rocks are barren. They contain neither soil nor water and are useless for any purpose, either agricultural or mineral. This was their condition on September 9, 1850, the date of the admission of California into the Union.

On the 4th day of April, 1870, the Legislature of California authorized the issuing of a patent for the lands sued for to one Tichenor upon payment of certain moneys by him and proof that he had, before patent issued, constructed at Mission Rock, a marine railway or dry dock. On the 11th day of July, 1872, the patent of the State, which recited the fact of Tichenor's compliance with the conditions of the Act, was issued to him. The California Dry Dock Company became the purchaser of the premises in 1878. After that date it proceeded to and did reclaim enough of the lands conveyed, by filling in with rock, to make an area of four acres, upon which extensive warehouses were built for commercial purposes, and from which wharves were built out to accommodate shipping. From the date of the conveyance of these lands to the Dock Company, it was in exclusive possession, claiming ownership, until June 6th, 1900, when it conveyed them to the Mission Rock Company, plaintiff in error.

In 1894, the United States Engineer officer in charge

of harbor work in San Francisco delineated on a map the limits beyond which further filling by the Dock Company must not go. This map was approved by the Secretary of War. A copy of it, with written notice of the prohibition of filling in, was served on the company.

On the 13th day of January, 1899, the President, purporting to act under the provisions of the Act of Congress, approved July 1st, 1864, designated and set apart for naval purposes, "Mission Rock", containing fourteen one-hundredths of an acre and the smaller adjacent rock already referred to, containing one one-hundredth of an acre.

This suit embraces far more than the land set apart by the order of the President.

Upon these facts, the judgment of the Court below was rendered in favor of the United States.

The plaintiff in error assigns the following errors in the conclusion of the Court:

a. The Court erred in deciding that the title to the submerged lands around Mission Rock did not vest in the State of California on its admission into the Union.

b. The Court erred in deciding that those portions of the lands described in the complaint which are shown by the findings to have been above the line of ordinary high water mark, were and are lands the title whereof was and remained, after the admission of the State of California into the Union, in the United States

and not in the State of California.

c. The Court erred in deciding that under the Act of July 1, 1864 (13 Stat. 332) relinquishing to the City of San Francisco the lands described in said act, the United States excepted from such relinquishment the lands described in the complaint or any part thereof.

d. The Court erred in deciding that it was within the power of the President under the said Act to designate the said lands, or any of them, as excepted from the relinquishment made in said Act, or that his act in so designating them as excepted, did in law or in fact devest the title thereto of the said city.

e. The Court erred in deciding that the designation made by the President under the said Act included anything more than the specific acreage of the lands sued for lying above high water mark stated in the said order.

f. The Court erred in holding that an action of ejectment would lie for the recovery of lands, the title to which had been fully relinquished by the United States in favor of the City of San Francisco, subject to a right of subsequent reservation by the President of such parts as he might thereafter designate.

g. The Court erred in deciding that the reservation in the Act of 1864 was not void, and that by the act of the President, nearly forty years later, designating said lands sued for, or any part of them, as reserved, the title thereto again became vested in the United States.

h. The Court erred in deciding upon the facts found, that judgment should be entered in favor of the United States and against the Mission Rock Company.

The foregoing assignments bring before the Court all of the questions which arise in the case. Some of these questions, as it seems to us, will not be reached by the Court for discussion, for the reason that the authoritative judgments of the Supreme Court on the State's title to and right of disposition of the lands within its limits covered by navigable waters, would seem to dis pose of the entire controversy.

The learned Judge of the Court below was of the opinion that tide or tidal lands, if such lands exist at all, within the meaning of the law, around islands, are such lands as are covered and uncovered by the flow and ebb of the daily tides; not lands which are continuously submerged by tide waters. If the State has the power to convey submerged lands, he sees "no rea- " son why it may not convey as submerged lands the " entire bottom of San Francisco Bay". The learned Judge further holds that, owing to the precipitous formation of "Mission Rock", there is, practically, no part of it which is covered and uncovered by the tide. Another objection found by the Judge against the defense of the plaintiff in error is that the right of the United States to approach islands, if it owned them, would be seriously affected by the ownership of the contiguous submerged lands by private persons. Finally, the opinion indicates the belief of the Judge

that though the title to the rocks had passed out of the United States by relinquishment under the Act of 1864, it had been revested with the title by the President's designation of them as reserved by the executive order of January, 1899. These views will, we think, be found to be erroneous.

The position of the plaintiff in error, that of the United States, as presented by the learned District Attorney and the opinion of the lower Court will be considered in this brief under the following heads:

1. *The submerged or tide lands became the property of the State on its admission. This right of property included the right to dispose of the land in its discretion, subject only to the right of control by the national government, if such disposition should interfere with the primary use of the waters over them as a means of commerce.*

2. "*Mission Rock*", *and the adjacent rocks, caps above the water's surface, were and are parts of the tidal lands, within the meaning of the constitutional principle which gives to each of the sovereign States its navigable waters and the soils under them.*

3. *The admission of the State on an equal footing with the original States gave to it all property above and below high water, not already given into private ownership or not reserved by the United States in the Act of admission. The reservation in that Act was of "public lands". These rocks were not "public lands".*

4. *The Act of 1864 did not relinquish any claim of the United States to tidal lands or to rocks in the bay. That Act referred to lands on the mainland. Hence, the President's reservation of "Mission Rock" was nugatory.*

5. *Assuming that "Mission Rock" was included in the meaning of the Act, then the title passed to the City of San Francisco. It has not since been revested in the United States, so that the latter can maintain ejectment for the rock.*

I.

The submerged or tide lands became the property of the State on its admission. This right of property included the right to dispose of the land in its discretion, subject only to the right of control by the national government, if such disposition should interfere with the primary use of the waters over them as a means of commerce.

The Act of September 9, 1850, admitted California into the Union "*on an equal footing* with the original States in all respects whatever", 9 *Stat.* 452, subject only to the conditions:

(*a*) That the new State "shall never interfere with " the primary disposal of the public lands within its " limits, and shall pass no law and do no act whereby " the title of the United States to, and right to dispose " of, the same shall be impaired or questioned".

(*b*) That the new State "shall never lay any tax or " assessment * * * upon the public domain of the " United States".

(*c*) That the new State "shall not tax non-resident citizens higher than residents".

(*d*) That the navigable waters within the State "shall be common highways, forever free to all citizens " without any tax, impost or duty therefor".

The admission of the new States "upon an equal foot- " ing in all respects whatever with the original States" was provided for by the Acts of cession by Virginia in 1784, whereby that State granted to the United States the great northwestern territory. This language was followed thereafter in all the Acts of Congress admitting new States. It is of great consequence in determining the right of California to the land in controversy in this action.

The first State admitted was Kentucky, in 1791, which was carved out of the Virginia territory. That State, therefore, came into the Union, as was provided in the statute of Virginia authorizing the cession, " having the same rights of sovereignty, freedom and " independence as the other States". (See *Pollard's Lessee* vs. *Hagan*, 3 How. 221.)

Regarding the rights of Alabama on the same subject, the Court said in the same case, (pp. 228, 229):

> "Alabama is, therefore entitled to the sovereignty and jurisdiction over all the territory within her limits, subject to the common law, to the same ex-

> tent that Georgia possessed it before she ceded it to the United States. To maintain any other doctrine is to deny that Alabama has been admitted into the Union on an equal footing with the original states, the Constitution, laws and compact to the contrary notwithstanding."

This language is quoted by the Court in *Shively* vs. *Bowlby*, 152 U. S. 27 and is followed by the observation of the Court in that, its latest decision on the subject:

> "That these decisions do not * * * rest solely upon the deeds of cession from the State of Georgia to the United States, clearly appears from the constant recognition of the same doctrine as applicable to California, which was acquired from Mexico by the Treaty of Guadalupe Hidalgo of 1848." (*Citing many cases.*)

In *Illinois Central* vs. *Illinois*, 146 U. S. 434, the Court, referring to the right of Illinois under the Virginia cession to equality of right with the original States, asserts the same rule in unmistakable language, and adds:

> "The equality prescribed would have existed, if it had not been thus stipulated. There can be no distinction between the several States in the Union in the character of the jurisdiction, sovereignty and dominion which they may possess and exercise over persons and subjects within their respective limits."

In *Fort Leavenworth Co.* vs. *Lowe*, 114 U. S. 526, the Court said:

> "But in 1861 Kansas was admitted into the Union on an equal footing with the original States,

> that is, with the same rights of political dominion and sovereignty, subject like them only to the Constitution of the United States."

In this case it was held that when Kansas was admitted as a State, the military reservation of the United States, except the fort and ground immediately round it, became subject to the jurisdiction of Kansas. The United States

> "could have excepted the place from the jurisdiction of Kansas, as one needed for the general uses of the government. But from some cause, inadvertence perhaps, or over confidence that a recession of such jurisdiction could be had whenever desired, no such stipulation or exception was made. The United States, therefore, retained, after the admission of the State, only the rights of an ordinary proprietor. * * * So far as the land constituting the reservation was not used for military purposes, the possession of the United States was only that of an ordinary proprietor.', p. 526.

The accepted doctrine, therefore, as to the status of a State upon admission is that it thereby becomes endowed with all the rights over persons and property which the original States had and have, except so far as any such rights may be specially and expressly reserved by the United States

The original States, on adoption of the Constitution, surrendered certain rights and powers to the Federal Government. The new States, in joining the Union, surrendered the same rights and powers, but none other than those, unless the surrender of additional

powers was prescribed as a condition of admission. Therefore, whatever rights of property and dominion were retained by the original States, these were also retained by the new States, except so far as they had been expressly given up.

It has been uniformly held that upon the admission of a State into the Union, the tide lands or the lands under tide waters vest in the State.

The learned judge of the Circuit Court seems to have drawn a distinction between lands diurnally covered and uncovered by the tides and lands which are constantly covered by the tides, even when at their lowest stage. Such distinction does not exist. The sovereignty of a State (and upon this principle of sovereignty, the right and title to the waters of the State and the lands under them rests) cannot be satisfied by the ownership and control of a few feet of shore. In *Pollard* vs. *Hagan*, 3 How. 230, the Court said:

> " This right of domain over the shores and the soils under the navigable waters, for all municipal purposes, belongs exclusively to the States within their respective territorial jurisdiction, and they, and they only, have the constitutional power to exercise it * * * * But in the hands of the States this power can never be used so as to affect the exercise of any national right of eminent domain or jurisdiction with which the United States have been invested by the Constitution. For although the territorial limits of Alabama have extended all her sovereign power *into the sea*, it is there, as on the shore, but municipal power, subject to the Constitution of the United States and 'the laws which shall be made in pursuance thereof'.

> By the preceding course of reasoning we have arrived at these general conclusions: First: The shores of navigable waters *and the soils under them*" (i. e. the soils under navigable waters) "were not granted by the Constitution to the United States but were reserved to the States respectively. Secondly: The new States have the same rights, sovereignty and jurisdiction over this subject as the original States. Thirdly: The right of the United States to the public lands and the power of Congress to make all needful rules and regulations for the disposition thereof, conferred no power to grant to the plaintiff the land in controversy in this case."

The land sued for lay below high water mark in Mobile Bay at the time of the admission of Alabama into the Union. The United States had given a patent to the land. This patent was held to convey no title. Most of the language above quoted was also quoted in *Gilman* vs. *Philadelphia*, 3 Wall. 726, as the sound principle governing the rights of the States to the soils under their waters.

In *Martin* vs. *Waddell*, 16 Pet. 410, the Court had already said:

> "When the Revolution took place the people of each State became themselves sovereign, and in that character hold the absolute right to all their navigable waters and the soils under them for their own common use, subject only to the rights since surrendered by the Constitution."

The question thus decided has been passed upon by the Supreme Court in cases affecting California on several occasions. The lack of distinction between tide

lands and submerged lands, so far as the ownership of either by the State is concerned, has been already shown by the cases quoted from, which concede the State's title to the "navigable waters and the soils under them", as well as to the shores bordering on navigable waters. In *San Francisco* vs. *Leroy*, 138 U. S. 671, the Supreme Court defined the character of lands which passed to California on her admission.

> "The lands which passed to the State upon her admission to the Union were not those which were affected occasionally by the tide; but only those over which tide-waters flowed so continuously as to prevent their use and occupation. To render lands tide-lands which the State by virtue of her sovereignty could claim there must have been such *continuity* of the flow of tide-water over them, or such *regularity* of the flow within every twenty-four hours as to render them unfit for cultivation, the growth of grasses or other uses to which upland is applied." This definition was quoted in *Knight* vs. *U. S. Land Association*, 142 U. S. 186.

The decided cases show no such distinction as seems to have been made by the Judge who tried the cause at bar. In *Weber* vs. *Harbor Commissioners*, 18 Wall. 65, the application of the rule to submerged lands, lying exactly as the lands now in suit lie, was absolute. We quote the language of Justice Field:

The complainant's "land is situated nearly half a "mile from what was the shore of the Bay of San Fran- "cisco at the time California was admitted into the "Union, and over it the water at the *lowest tide* then "flowed at a depth sufficient to float vessels of ordinary

"size. Although the title to the soil under the tide-
"waters of the bay was acquired by the United States
"by cession from Mexico, equally with the title to the
"upland, they held it only in trust for the future State.
"Upon the admission of California into the Union upon
"equal footing with the original States, *absolute prop-*
"*erty in and dominion and sovereignty over all soils*
"*under the tidewaters within her limits passed to the*
"*State, with the consequent right to dispose of the title*
"*to any part of said soils in such manner as she might*
"*deem proper*, subject only to the paramount right of
"navigation on the waters, so far as such navigation
"might be required by the necessities of commerce with
"foreign nations or among the several States, the reg-
"ulation of which was vested in the general govern-
"ment."

It is common knowledge that all that part of the City of San Francisco below Montgomery street in places, and Sansome Street in other places as far east as the line of the present water front was once covered by tide waters. If the title to the lands round Mission Rock did not pass to the State of California on its admission as a State, the title to all of the now filled in lands in the area described, was never in the State. All of that property with its vast improvements including its wharves, therefore, would still belong to the United States. That these lands were submerged lands, the Court knows from the fact that the tides do not recede in this locality for a distance of a quarter of a

mile. The writer of this brief himself saw the remains of the ship "Niantic" dug up at the northwest corner of Clay and Sansome streets. On the other hand, if the United States has no title to such parts of San Francisco, it has no title to the filled in lands round Mission Rock. The untenableness of the position taken by the Court below may be well illustrated by the inquiry: Supposing a rocky cone to stand to-day at the corner of Front and California streets, what title would the occupants of all the surrounding lands, once not land, but navigable waters round the rock, have to their blocks of buildings? If their title should be deemed good, that of the Mission Rock Company is equally good.

The Court below assumed that the power of the State to grant any tract of land under the waters of the bay, if conceded, involved the power to grant away all of such lands. In this it fell into error. The case, *Illinois Central* vs. *Illinois*, 146 U. S. 452, distinctly recognizes that grants in limited quantities and for the public accommodation, may be made. The Court says:

> "The interest of the people in the navigation of the waters and in commerce over them may be improved in many instances by the erection of wharves, docks and piers therein, *for which purpose the State may grant parcels of the submerged lands*, and so long as their disposition is made for such purpose, no valid objections can be made to the grants. It is grants of parcels of lands under navigable waters, that may afford foundation for wharves, piers, docks and other structures in aid of commerce and grants of parcels, which being occu-

> pied, do not substantially impair the public interest in the lands and waters remaining, that are chiefly considered and sustained in the adjudged cases as a valid exercise of legislative power consistently with the trust to the public upon which such lands are held by the State. But that is a very different doctrine from the one which would sanction the abdication of the general control of the State over lands under the navigable waters of of an entire harbor or bay, or of a sea or lake."

The statute which granted the lands in controversy expressly provided for the building thereon of a marine railway. This was done, and since that time, docks and warehouses have been built on the reclaimed land. All these are in aid of commerce. They do not impair navigability. The United States itself now seeks to gain the property with the intention of using it as a coaling station. It does not complain that the State has violated a trust in making the grant. It does not propose to restore the reclaimed lands to the uses of navigation. It intends, as the President proclaims, to continue them in the same use as before, but as a government coaling station, not as docks and wharves for the convenience of the general public. This fact should be conclusive, under the *Illinois* case, that the State, if it had the title when it conveyed to Tichenor, made a grant of it which was in full discharge of the trust under which it had held the fee.

In *Lowndes* vs. *Huntington*, 153 U. S. 1, 30, the Court held that the grant of lands under the waters of Huntington Bay, from low water mark out, "for the

purposes of oyster cultivation", was valid. The Court said:

> " Either the title to these submerged lands passed by virtue of the colonial grants to the town of Huntington, or else it was in the State of New York (*Martin* vs. *Waddell*, 16 Pet. 367; *Pollard* vs. *Hagan*, 3 How. 212; *Shively* vs. *Bowlby*, 152 U. S. 1, and this Act" (of the Legislature of New York) "whose validity seems not to be questioned, cedes all the right, title and interest of the State in these lands to the town, so far at least as is necessary for the purpose of oyster cultivation."

The *Illinois* case further holds that the fact that there is no tide land in the Great Lakes, does not affect the right of the State. That right is the right to the soil under its navigable waters (146 U. S. 436).

See also

Morris vs. *U. S.*, 174 U. S. 236;
Mann vs. *Tacoma*, 153 U. S. 273;
Knight vs. *U. S. Assn.* 142 U. S. 183;
Hardin vs. *Jordan*, 140 U. S. 381;
Packer vs. *Bird*, 137 U. S. 382;
Co. of St. Clair vs. *Livingston*, 23 Wall. 64–68.
Barney vs. *Keokuk*, 94 U. S. 336–338;
Gilman vs. *Philadelphia*, 3 Wall. 726;
Mumford vs. *Wallace*, 6 Wall. 436;
Smith vs. *Maryland*, 18 How. 74;
Goodtitle vs. *Kibbe*, 9 How. 471.

The Supreme Court of California asserted the same doctrine in *Oakland Water Front Case*, 118 Cal. 182, while the claim of ownership in such lands is recognized by the statute of the State in the *Civil Code*, sec.

670. (A like statutory claim by Washington is referred to in *Mann* vs. *Tacoma*, 153 U. S. 284.)

The right of the State to its navigable waters includes the right to the fish in them and the use of the beds for the planting of oysters to the exclusion of the citizens of other States.

Macready vs. *Virginia*, 94 U. S. 391;
Smith vs. *Maryland*, 18 How. 74;
Trustees vs. *Lowndes*, 40 Fed. R. 630.

The United States may appropriate tide lands, though sold by the State, if the necessities of commerce shall require them, *but if they have been improved they can be taken only upon due compensation made.*

Scranton vs. *Wheeler*, 57 Fed. R. 812;
Monongahela vs. *U. S.*, 148 U. S. 312.

The State may create an obstruction to navigation when commerce will be thereby aided.

In *Gilman* vs. *Philadelphia*, 3 Wall. 713, it appears that the State of Pennsylvania in 1857 authorized the City of Philadelphia to erect a permanent bridge over the Schuylkill river at Chestnut street. We quote from the opinion of the Court:

> "The complainants are citizens of other States and own a valuable and productive dock and wharf property above the site of the contemplated bridge. The river is navigable there for vessels drawing from eighteen to twenty feet of water. Commerce has been carried on in all kinds of vessels for many years to and from complainant's property. The bridge will not be more than thirty feet above the ordinary high-water surface of the river and

hence will prevent the passage of vessels having masts. This will largely reduce the income from the property and render it less valuable. The defendants are proceeding to build the bridge under the authority of an act of the Legislature of Pennsylvania. The Schuylkill river is entirely within her limits and is 'an ancient river and common highway of the State'. For many years it has been navigable for masted vessels for the distance of about seven and a half miles only from its mouth."

The Court continued:

"The river, being wholly within her limits, we cannot say the State has exceeded the bounds of her authority. Until the dormant power of the Constitution is awakened and made effective, by appropriate legislation, the reserved power of the States is plenary, and its exercise in good faith cannot be made the subject of review by this Court" (p. 732).

Regarding the State's discretion in such case, it said (p. 729):

"It must not be forgotten that bridges, which are connecting parts of turnpikes, streets and railroads, are means of commercial transportation, as well as navigable waters, and that the commerce which passes over a bridge may be much greater than would ever be transported on the water it obstructs."

Following this case, it was said in *Assante* vs. *Chicago Bridge Co.*, 41 F. R. 365:

The bridge "is across a navigable stream of the United States, but in the absence of legislation by Congress, States may authorize bridges across navigable streams by statutes so well guarded as to protect the substantial rights of navigation. Or,

> as it has been put, no State can permit an obstruction of the navigable waters of the United States. But, although every bridge having piers *ex necessitate* is more or less an obstruction, still it may be built if a passage is reserved of sufficient width for the purposes of foreign and domestic commerce."
>
> See also *Rhea* vs. *Newport*, 50 F. R. 16;
> *Willammete Bridge Co.* vs. *Hatch*, 125 U. S. 1.

The State may, in aid of its own commerce, remove obstructions, deepen channels and improve them generally, if such acts do not impair their navigation or defeat any system provided by the general government.

Mobile vs. *Kimball*, 102 U. S. 699.

In the case of the "Mission Rock" improvements, the Government, through the Secretary of War and the Corps of Engineers, recognized the rights of the Dock Company and defined the limits beyond which the United States would not permit further filling up of the channel.

The illustrations above given establish conclusively the "*absolute property in and dominion and sovereignty over all soils under the tidewaters*" which the State possesses, subject only to the paramount right of the Federal Government to control the State's action under the "commerce clause" of the Constitution in reference thereto, or to subject them to the needs of commerce. The necessities of the navy of the United States, which call for a convenient coaling station, are not necessities of commerce with foreign nations or among the several States. Even if they were, the property cannot be

taken except upon compensation to the State's grantee.

The State of California in patenting the land to Tichenor on condition that he should erect "a dock or marine railway at Mission Rock" devoted the land in aid of commerce, an object carried to a conclusion by the Dock Company, which spent enormous sums in making the land available and in the construction of warehouses and docks for commercial purposes.

We submit, therefore, that the lands covered by tide waters were the property of the State, and that the State's title, conveyed to Tichenor, and thereafter conveyed to the Mission Rock Company, vested in the latter absolute dominion therein, subject only to such regulations of the United States with reference to the keeping open of navigable channels as its officers might make. These have been made and complied with, as we have seen.

It needs no argument on our part to support the self-evident proposition that if the title to the submerged lands vested in the plaintiff in error and its predecessor, they had the right to improve them by filling in, and that the area thus made available by being brought above the water level, belongs to the grantee of the State regardless of the ownership by the United States of lands adjoining such submerged lands, if there be such ownership.

II.

"Mission Rock" and the adjacent rocks, caps above the water's surface, were and are parts of the tidal lands, within the meaning of the constitutional principle which gives to each of the sovereign States its navigable waters and the soils under them.

The little cap, which, if rectangular, would at its base at high water enclose a space 78 feet by 78 feet, and the adjacent cap, 20 feet square, though they emerge above the tide waters, are nevertheless part of the dominion and soil which passed to the State upon its admission. They are mere specks upon an enormous surface of land and water belonging to the State. The law will not be guilty of the incongruity which is implied in the assertion that, though the State owns its shore-line from its northern limits to the Mexican boundary, it still does not own the few rocks scattered miles apart and imbedded in the shore, which, by chance, lift their caps sufficiently high to be above ordinary high tide. If the State owns such rocks, then it owns the rocks in controversy, which stand out as mere points above the waters. They are part of the navigable waters and of the soil under the navigable waters. The State may, as we have seen, destroy them as obstructions, or turn them to use as improvements to navigation.

The right to use or destroy is a right of ownership. The right of sovereignty implies the right of defense

of a State's borders. The right would be in theory, nullified if another sovereignty should be allowed to own or dispose of a part of the approaches to those shores.

> "To give to the United States the right to transfer to a citizen the title to the shores and the soils under the navigable waters, would be placing in their hands a weapon which might be wielded greatly to the injury of State sovereignty, and deprive the States of the power to exercise a numerous and important class of police powers."
>
> *Pollard* vs. *Hagan*, 3 How. 230.

The reason for conceding the right of the State to the lands under navigable waters applies equally to the rocks that project from such waters. In *Shively* vs. *Bowlby*, 152 U. S. 1, 49, the Court said:

> "The Congress of the United States in disposing of the public lands, has constantly acted upon the theory that those lands, whether in the interior, or on the coast, above high-water mark, may be taken up by actual occupants, in order to encourage the settlement of the country; but that the navigable waters and the soils under them, whether within or above the ebb and flow of the tide, shall be and remain public highways; and being chiefly valuable for the public purposes of commerce, navigation and fishery, *and for the improvements necessary to secure and promote those purposes*, shall not be granted away during the period of territorial government."

We may well imagine a sand spit rising a foot or two above high-water mark situated at a distance from the ocean shore. Would such spit own a sovereignty other than that of the shore and mainland?

III.

The admission of the State on an equal footing with the original States gave to it all property above and below high water, not already given into private ownership or not reserved by the United States in the Act of Admission. The reservation in that Act was of "public lands". These rocks were not "public lands".

California, upon her admission into the Union upon an equal footing in all respects whatever with the original States, became the proprietor of all lands, above and below the line of tide water, to the same extent that Massachusetts or Virginia, was such owner at the time when she joined the Union, except only so far as the Act of Admission took from California by express words any portion of such dominion.

The ownership of Massachusetts in its shores is described by Chief Justice Gray as follows:

> "The commonwealth of Massachusetts has all the title and rights, public and private, both of the King and the Parliament of England in every part of the seashore of the commonwealth, which has not vested in individuals or corporations under the Colonial ordinance of 1647,or other act of the Government; and the Legislature may grant the title in the soil, or the right to build wharves thereon below as well as above high water mark."
>
> *Nichols* vs. *City of Boston*, 98 Mass. 42.

And the same Judge, speaking lately for the highest Court of the Union, said that the discovery of the

English possessions by British subjects vested in the King

> "all vacant lands and the exclusive power to grant them. * * * And upon the American Revolution all the rights of the Crown and of Parliament vested in the several States, subject to the rights surrendered to the National Government by the Constitution of the United States."
> *Shively* vs. *Bowlby*, 152 U. S. 14.

The treaties with England which acknowledged the independence of the United States, gave to the National Government no territory in any State. Although it had for years been in possession of Fort Niagara in New York, it was held by the Supreme Court of that State that the United States had acquired no title thereto

People vs. *Godfrey*, 17 Johns 230, quoted as authority in *Fort Leavenworth* vs. *Lowe*, 114 U. S. 538.

The new State therefore by her admission upon an equal footing with the original States, became endowed with the same title to all lands—uplands, lowlands, tide-lands—within her limits, not already granted and not specially reserved by the United States, as Massachusetts had at the date of the formation of the Union. If the rocks of the Bay of San Francisco were not specially reserved, they became California's property in 1850. They were not so reserved unless they fall within the description of "public lands" to be disposed of by the United States. The Court will note that there is no *reservation* in the Act of any lands what-

ever. The State is admitted upon the condition that she will not *interfere with the primary disposal of the public lands within her limits.* The public lands referred to by the Act are clearly *those public lands which the United States is in the habit of disposing of*, not every parcel of rock, sand spit or river bar within the State's confines which may not have passed into private ownership prior to the Mexican cession.

It is important, therefore, to determine what the legal effect is of the condition annexed to the State's admission, because, as was held in *Pollard's Lessee* vs. *Hagan*, 3 How. 223 (construing similar words upon the admission of Alabama), when the State was admitted, '*nothing remained in the United States*, according to " the terms of the agreements, but the public lands."

These words have been so often construed by the Supreme Court in cases in which the *very question was* whether the words "public lands" included lands below high-water mark, that further controversy on the subject is impossible.

In *Mann* vs. *Tacoma Co.*, 153 U. S. 273, the question decided was whether the holder of Valentine scrip, which, according to its terms, might be located on "*unoccupied and unappropriated public lands*" could by its aid, take up tide lands in the Territory of Washington.

The Court, after quoting from *Shively* vs. *Bowlby*, 152 U. S. 1, said:

" It is unnecessary in view of this recent ex-

amination of the question, to enter into any discussion respecting the same. It is settled that the general legislation of Congress in respect to public lands does not extend to tide lands. There is nothing in the Act authorizing the Valentine scrip, or in the circumstances which gave occasion for its passage, to make an exception to the general rule. It provided that the scrip might be located on the unoccupied and unappropriated public lands, but the term "public lands" does not include tide lands. As said in *Newhall* vs. *Sanger*, 92 U. S. 761, 763: 'The words public lands are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws.'" The location was held invalid.

See also

Leavenworth etc. Railroad vs. *United States*, 92 U. S. 733;
Doolan vs *Carr*, 125 U. S. 618;
Newhall vs. *Sanger*, 92 U. S. 761, 763;
Shively vs. *Bowlby*, 152 U. S. 49;
Morris vs. *U. S.*, 174 U. S. 237.

We ask the Court to note the similarity of language in the construction of the Court, that public lands are those subject to *disposal under general laws*, and the condition of the Act of Admission that California should not interfere with the primary *disposal* of the public lands. The Act must, necessarily, be read to prohibit interference with the disposal of those lands which are subject to sale or other disposal under general laws. Isolated rocks, lying in tide waters, barren of soil and water, and of no value for settlement, with neither agricultural or mineral resources, are not

such lands as are held by the government for "disposal under general laws".

> "The United States has wisely abstained from extending (if it could extend) its survey and grants beyond the limits of high water."
>
> *Barney* vs. *Keokuk*, 94 U. S. 324, 338;
> *Leavenworth* vs. *U. S.*, 92 U. S. 733;
> *Doolan* vs. *Carr*, 125 U. S. 618;
> *Illinois Central* vs. *Illinois*, 146 U. S. 387.

If the foregoing cases establish the rule that no settlement could lawfully be made on Mission Rock under the pre-emption or homestead Acts, it is clear that the rock is not "public land". In *Morris* vs. *U. S. (sup.)* the Court construed the Maryland statutes providing for the disposition of "vacant lands" and held that lands covered by tide water could not have been contemplated

> "because such lands are incapable of ordinary and private occupation, cultivation and improvement, and their natural and primary uses are public in their nature for highways of navigation and commerce."

The Court cites as authority *State* vs. *Pacific Guano Co.*, 22 S. Car. 50.

Indeed, the various public land laws of the United States furnish a legislative interpretation of the words "public lands". It is impossible to read the provisions of these Acts without being convinced that none of them is intended to apply to lands under the navigable waters of the State, or that they have application to

any lands except those which

> "whether in the interior or on the coast, above high water mark, may be taken up by *actual occupants*, in order to encourage the settlement of the country."
>
> *Shively* vs. *Bowlby*, 152 U. S. 49.

And this rule of interpretation is adopted by the Court in *Morris* vs. *U. S. (sup.)* which cites with approval *Alleghany* vs. *Read*, 24 Pa. St. 39, 43. In the last named case a survey was made by the Court of all the statutes governing the disposition of islands in the rivers of the State and upon such survey, it was held that the word "islands" meant such islands as, at the time of application for purchase, *had a soil on them*. Hence an island, once covered with soil, but laid bare by a freshet, so that though entirely exposed in the ordinary stages of the river, the land was covered when the river was very high, was held not to be an island within the meaning of the statute.

Said the Court:

> "The title of the commonwealth to what remained was not gone, but was no longer grantable under the Act of Assembly for selling islands. The foundation of the island belongs to the commonwealth still, but she holds it as she does the beds of the river and all sandbars, in trust for all her citizens *as a public highway*."

This case also fairly supports the defendant's contention that the rocks of the navigable waters and of the tidal lands of the Bay of San Francisco are parts of such waters and lands and belong to the State. They

are parts of the public highway, necessary for the public convenience in the use of the navigable waters, whether for lighthouse purposes, wharves or docks. If the island in the Alleghany which rose above the ordinary high stage of the river was part of the navigable waters of Pennsylvania, there is no reason why a little cap rising out of the midst of the Bay of San Francisco should not be deemed to be part of that body of water.

The foregoing views, we respectfully submit, are fully sustained by an unbroken chain of authority and justly and correctly sustain the defendant's position that as to all tide lands or submerged lands, the title is in the State; that "Mission Rock" is part of such lands, and that if it be not such, it nevertheless belonged to the State as part of the territorial sovereignty or dominion which vested in it on the admission of the State, because it was no part of the "public lands", with the primary disposal of which the State then agreed not to interfere.

We shall not discuss the question of littoral or riparian right advanced in argument by the Government. It is sufficiently answered, even if we should assume that the cap of "Mission Rock" is still vested in the United States, by the statement of the fact that the title of the submerged lands, at the time of filling in, was beyond question in the defendant as the owner of the State's patent, and that it had the right to fill in its own land, if the United States did not interfere on the ground of any consequent injury to navigation. If

the Act was an interference with commerce, the United States should at the time have prevented it, as it could have done. If the filling be such interference now, the United States may by proper proceedings seek the aid of the Courts to force its removal, *but it cannot claim title to the land* upon the ground that the filling in interferes with commerce. If a man builds up a wall on his own land which obscures an ancient light of his neighbor, the latter does not thereby become vested with title to the wrongdoer's land.

IV.

The Act of 1864 did not relinquish any claim of the United States to tidal lands or to rocks in the bay. The Act referred to lands on the mainland. Hence, the President's reservation of "Mission Rock" was nugatory.

The United States assumes in this action that the land in controversy was conveyed by it to the City of San Francisco, by the Statute of July, 1864, which purported to relinquish and grant its title to a larger area,

> "there being excepted from the relinquishment and grant all sites and other parcels of land which have been or now are occupied by the United States for naval, military or other public uses, or *such other sites, or parcels as may hereafter be designated by the President of the United States within one year after the rendition to the General Land Office by the Surveyor-General of an approved plat of the exterior limits of San*

> *Francisco as recognized in this section in connection with the lines of the public surveys*" (13 Stat. 334).

The President, by executive order dated January 13, 1899, purported to set apart

> "Mission Island and the small island southeast thereof * * * containing according to the plat fourteen one-hundredths of an acre and one one-hundredth of an acre * * * for naval purposes."

In face of the language of the order, it is hardly worth while to discuss the proposition advanced by counsel for the Government, that the President did, or intended to set aside more than the rocks which he named or a greater area than that which he designated. The order did not specify the filled up lands which are now above tide water, nearly four acres in extent. It must be construed according to its words. Indeed, it is itself an admission by the executive department of the title of the plaintiff in error to the surrounding lands. The only question is as to the legal effect of the order.

The Statute of 1864 should be read in the light of contemporaneous events. These are fully set out in *San Francisco* vs. *Leroy*, 138 U. S. 665. It there appears, and it is part of the records of the Circuit Court for the Ninth Circuit that in June, 1855, there was pending in the United States District Court, the application of the City of San Francisco for confirmation of its title, as a pueblo, to four square leagues of land on the peninsula. In that month, the Van Ness ordinance

was adopted by the Common Council, by which the Mayor was directed to enter in the proper land office " all the lands *above the natural high-water mark of the Bay of San Francisco*" within the corporate limits of the City, which lands the City was to hold "in trust for " the several use, benefit and behoof of the occupants " or possessors thereof". The ordinance also provides that ratification of its provisions should be sought from the Legislature and application be made to Congress " to relinquish all the right and title of the United " States to the said lands, for the uses and purposes " hereinbefore specified".

It is quite clear that this step was taken to protect the inhabitants of the City against a possible adverse decision by the District Court. In 1858 the Legislature ratified the ordinance. In 1864 Congress relinquished its interest in favor of San Francisco to the lands comprised within the charter limits of 1851, as defined in the ordinance, reserving, however, in the words already quoted, the right of excepting from the relinquishment, sites and parcels as might be designated by the President within the time stated in the Act. Before a year had elapsed from the date of the Act of 1864, it became, as to all lands on the peninsula, *functus officio* by reason of the decree of the United States Circuit Court of May, 1865, which confirmed to the City, as successor of the Mexican pueblo, four square leagues of land on the peninsula above ordinary high water mark. *The title to the site of San Francisco*

was thus found to antedate the cession of California. The Act of 1864, therefore, if the United States had nothing to convey, relinquished nothing to the City of San Francisco, and if it had held that its intention was that it should act upon the lands referred to in the Van Ness ordinance and if these lands did not include lands lying below high water-mark, the Act of 1864 did not convey "Mission Rock". In 1866, an appeal then being pending before the Supreme Court of the United States from the decree of the Circuit Court, the aid of Congress was sought to prevent that decree from being disturbed. That body passed the Act of March 8, 1866, confirming the decree establishing the pueblo title and relinquishing the claim of the United States to the lands included within it. That Act caused necessarily the dismissal of the appeal. The title of the pueblo under the decree thus became final. It would seem from this recital that, possibly excepting "Mission Rock", the Act of 1864 conveyed nothing to the City. The relinquishment of title by the United States to property decreed to have been, since the date of its organization, in the City by virtue of its right of succession to the Mexican pueblo, added nothing to the already perfect title established by the decree. The only question then, is whether the Van Ness ordinance, which was the basis of the Act of 1864, included lands not lying on the peninsula, such as an uninhabitable rock of insignificant dimensions out in the bay. The express object of the ordinance was to secure to

the "*occupants and possessors*" of lands within the corporate limits the benefit of the title to the lands occupied by them. The lands "above high water mark of the Bay of San Francisco", the title to which was sought by application to the United States for the behoof and benefit of such "occupants and possessors", were presumably the same lands for which the City was contending in the Court at this time on behalf of the same persons. The lands claimed for the pueblo included only lands on the peninsula above high water mark and, therefore, excluded "Mission Rock". It is only reasonable to assume that these were the lands applied for by the ordinance and that these did not include the rock. When therefore, the decree of the Circuit Court confirmed to the City the four square leagues owned by the pueblo, excluding therefrom "such lands as have been heretofore reserved or dedi- "cated to public uses by the United States", it estopped the parties to the suit (the United States and San Francisco), from thereafter claiming title to any lands within the pueblo limits, not adjudicated to them by the decree. The power of reservation given to the President by the Act of 1864 was thus declared to have nothing upon which to operate, unless "Mission Rock" should be held to have been granted to the City by that Act, and this rock, as we have seen, was never within the intention or reason of the ordinance, or the statutes of California or the United States.

" A thing which is within the letter of the stat-

ute is not within the statute, unless it be within the intention of the makers."

1 Bac. Abr., 247, quoted and applied in an analogous case;

Leavenworth vs. *U. S.*, 92 U. S. 733, 741.

The failure of the Surveyor-General to file a map in the General Land Office "in connection" with the lines " of the public surveys" as recognized in the fifth section of the Act, and the omission of the President for thirty-six years to take any action are, themselves, a construction of the Act by the executive department to the effect contended for by us, that the lands there referred to were the lands being contended for by the pueblo.

V.

Assuming that "Mission Rock" was included in the meaning of the Act, then the title passed to the City of San Francisco. It has not since been revested in the United States, so that the latter can maintain ejectment for the rock.

If we accept the Government's contention and admit that "Mission Rock" was intended to be covered by the area defined in the Act of Congress from which exceptions might be made under the terms of the Act, there are still insuperable objections to the maintenance of this action. Ejectment cannot possibly lie to recover lands, the title to which has been conveyed by the plaintiff subject to an exception which is undefined in the

grant. Upon the Government's theory, the title to "Mission Rock" has been in the City of San Francisco for thirty-six years. The exception in the Act of Congress is of such site or sites as, after the filing of a map to be thereafter made, the President might, within a year, select for public purposes. The exception was void for uncertainty. An exception in a deed must be a portion of the thing granted, or described as granted, and which would otherwise pass by the grant.

Brown vs. *Allen*, 43 Me. 590.

The same certainty of description is required in an exception out of a grant as in the grant itself, and where a deed excepts out of a conveyance one acre of land and there is nothing in the exception, or evidence to locate it upon any particular part of the tract, the exception is void for uncertainty, and the grantee takes the entire tract.

Mooney vs. *Cooledge*, 30 Ark. 640;
Darling vs. *Crowell*, 6 N. H. 421;
Andrews vs. *Todd*, 50 N. H. 565;
Waugh vs. *Richardson*, 30 N. C. 470; s. c. 8 Iredell, 470.

It must be conceded, then, that the exception retained no title in the United States to any part of the land granted. So far as "Mission Rock" is concerned, the title has never re-vested, nor has the United States ever entered or obtained possession.

In a case in which the exception was of "three-fourths of an acre as a burying ground" the Court

held that the evidence showed what the precise land intended to be reserved was, but it said:

> "It is well settled that in such cases the uncertainty may be cured by the election of the grantor, *which, however, must be made in a reasonable time.*"
>
> *Benn* vs. *Hatcher*, 81 Va. 85.

Where the reservation in the deed was not specific enough to take it out of the words of conveyance, the land could not be recovered *in ejectment.*

Butcher vs. *Creel's Heirs*, 9 Gratt. 201.

The exception in the Act of 1864 is repugnant to the grant, and therefore void.

> "Every saving which crosses the grant is, so far as it is repugnant, of no force; and *it is repugnant wherever the things must necessarily pass in the first instance to satisfy the words.*"
>
> *Shoenberger* vs. *Lyon*, 7 W. & S. 184.

In *Stamburgh* vs. *Hollabaugh*, 10 S. & R. 357, A conveyed 142 acres to B in fee, "excepting a small "quantity struck off the said tract at the west end by "a conditional line". The line was not marked and could not be ascertained. Twenty-three years afterwards, A came upon the land, had twenty-one acres surveyed, pointed them out to his vendee and deeded them. It was held that A's vendee had no title. The Court said:

> "But the reservation of a small quantity is so very uncertain, I doubt whether so vague an exception could be supported. * * * How could a purchaser know what or where he was buying? The land could be locked up from any description

> of improvement, until it pleased the grantor to strike off what he pleased, or where he pleased. Can it consist with any principle of property, or any certainty or security in conveyances and possession, that at the end of 23 years, the grantor point out with the swing of his whip, where it was to begin, though he confesses it appears a strange wood to him, and then leave it to them an to whom he was about to sell the small quantity, to gut the whole and scoop out the marrow of the land; and can it depend on his nod, how much he is to take, under the denomination of a small quantity. * * *The title of the whole would pass, for in 23 years the presumption would be that this undefined small quantity has been abandoned to the grantee.*"

The curious analogy of this case to the case at bar and the caustic remarks of the Judge are not weakened by recalling the facts that the Act of 1864 is "an Act "to *expedite* the settlement of land claims in Cali- "fornia * * * ", that the power, as it is claimed, is given to the President to take property worth millions from the inhabitants, or, in his discretion, to take nothing at all, and that by holding back the survey of the land by his subordinate officer or the filing of the "approved plat" in the general land office, he may postpone the right of selection until such time as a merciful Congress may repeal the law itself.

In 1865 the Circuit Court nullified the Act by its "Pueblo" decree, as to all the lands on the peninsula of San Francisco. The exact limits of the rights of the United States were in that decree settled for ever. The Court held then, that the right of San Francisco to the lands on the peninsula antedated the cession by

Mexico to the United States. We have already seen that all of the tidal lands passed to the State by the Act of Admission. Goat Island, Angel Island and Alcatraz Island were excluded from the grant by the terms of the Act of 1864—these and other lands having been reserved to public uses in 1850 by the executive—and the peninsula belonged to the Pueblo before the cession, though the exact limits of the Pueblo had not been determined. There was, therefore, *nothing left in the United States* within the boundaries referred to in the Act which could pass to San Francisco by the Act of 1864 *except Mission Rock* and the smaller rocks which every year or two are being blown out of the water. If "Mission Rock" was, in fact, all that the United States could pass by its deed, the gift, it seems, was an Indian gift. It has been recalled. The exception as now sought to be enforced, covers *the entire estate granted by that Act*. The United States must be held to know the law as much as the private citizen. Hence, when the grant of the Act of 1864 was made, it knew that it was conveying only "Mission Rock". When it created the exception which, if lawful, would take away "Mission Rock", it created an exception repugnant to the grant, which exception was, for that reason, void.

The evidence further shows that the map which was to be filed by the Surveyor-General in the land office has not yet been filed. The right of the President to make a selection or reservation is, by the terms of the

Act, to vest upon the filing of the map, and not before. He had no power to make the reservation when he did so.

In whatever way we view the matter, it certainly seems clear that the exception cannot authorize an action of ejectment, success in which would take from the plaintiff in error, lawfully in possession of the title of the grantee under the Act, not the lands merely, but vast and costly improvements. Whatever title the State had, the plaintiff in error has by virtue of a patent; whatever title the city had, the plaintiff in error has, by virtue of its independent and adverse occupancy for nearly thirty years.

We have not entered into a discussion of littoral rights or those of accretion. These are clearly inapplicable, whatever the law may be, *first*, because the plaintiff in error is the undoubted owner of the lands surrounding the rocks upon which its predecessor created the area of land now above tide water, which area is termed "accretions" by the Government's counsel; *second*, because the President has not set apart the "accretions" by his order, but only the land containing fourteen one-hundredths of an acre known as "Mission Island" and the "small island northeast thereof", which contains one one-hundredth of an acre. Counsel for the United States suggests, as an argument in favor of a presumed intention by the Government not to allow private ownership or State ownership of submerged lands surrounding its islands, that such ownership

would be inconsistent with their use for public purposes, and it is suggested that "Alcatraz", as a means of defense, would be rendered useless were it permissible to the State to grant such lands. The answer to this suggestion is best found in the evidence in the case at bar. The United States engineers, with the approval of the War Department, have drawn the line beyond which the plaintiff in error shall not use *its own land.* At this line, the Government declares that the channels of commerce begin. The ownership of the plaintiff in error beyond this line can avail it nothing. The National Government is supreme in its power over navigable waters. Hence, though the State should sell every foot of tide and submerged land round "Alcatraz Island", the purchaser would take the title subject, always, to the control of the United States over the waters covering them. At its will, the original depth and the free navigation of these, may continue forever.

The plaintiff in error submits that the judgment should be reversed and that judgment should be ordered to be entered on the findings in favor of the Mission Rock Company.

Respectfully submitted,

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JOHN GARBER,
Of Counsel.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

NINTH CIRCUIT.

MISSION ROCK COMPANY, Substituted for California Dry Dock Company,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

No. 682.

BRIEF OF APPELLEE.

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In the United States Circuit Court of Appeals, Ninth Circuit.

MISSION ROCK COMPANY, Substituted for California Dry Dock Company,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

No. 682.

BRIEF OF APPELLEE.

In 1850 California was admitted into the Union upon an equal footing with the original States, and succeeded to certain sovereign rights. She has, as an incident to this sovereignty, a title in her tide and submerged lands lying within her exterior boundaries. This is an undisputed principle of law; one which the Government of the United States does not seek to attack; but, on the other hand, one which it will always defend, and a right which it will ever guarantee.

How far this sovereignty of the State can be made to interfere with and destroy that which was primarily a right of the Federal Government, and with which the Federal Government has never parted, will be considered hereafter.

At the time of the admission of California into the Union, Mission Rock and the adjacent rock projected above ordinary high water mark in the bay of San Francisco, so that their area was fourteen one-hundredths of an acre and one one-hundredth of an acre, respectively. At

that time they were steep and precipitous, not admitting of what is termed "tide lands"; that is, land covered and uncovered by the ebb and flow of the tide, and all lands around them were wholly and entirely submerged.

Generally speaking, in this brief, unless otherwise apparent, an allusion to "Mission Rock" shall be intended as including both Mission and the adjacent rock.

Appellee, in support of its claim, seeks first to show that the title to these islands was in the Government of the United States, as the title to all lands not especially disposed of was in the Government by virtue of the treaty of Guadalupe Hidalgo. That treaty imposed upon the Government the obligation of assuring title to the grantees of the Mexican Government, and Congress passed certain acts creating provisions for the purpose of ascertaining these titles; the Courts of the country were given jurisdiction thereof; Spanish and Mexican private and public grants were regularly confirmed, and those entitled thereto, or their heirs or assigns, were finally given patents.

These rocks were entirely without the boundaries of any of these grants; the primary title to them was in the Government; they did not go to the State by reason of its sovereignty, as they were not tide nor submerged lands, and the Government has never by any act parted with its title.

Appellant claims to derive title from the State of California by virtue of an act of its legislature, approved April 4, 1870, and a patent issued in conformity therewith. This will be further considered.

It was first contended that, under the act of Congress of the United States of July 1, 1864, the title to these rocks passed from the Government. It was admitted that title did not otherwise pass. Appellant seems to have aban-

doned this position and contends now that said act did not purport to convey these lands. We will hereafter meet appellant upon that ground and endeavor to show that, there being no other statute to pass this title from the Government, the title still remains in the original owner under the treaty.

Let us first suppose that the act of 1864 was intended to include Mission Rock. It then appears that the title would pass to the city of San Francisco, and not to the State. It is, however, noticed in said act that in order to perfect title, a condition precedent is to be performed.

Under the rule that in construing grants from the sovereign, it is to be construed against the grantee and not against the grantor, the nonperformance of this condition could in nowise work an injury to the grantor. The Government cannot suffer from laches; but if it could, then can the apppellant, who claims title from the State of California, complain of the laches of the Government in this regard? If these conditions had been performed, and the title passed from the Government, it would have gone to the city of San Francisco. The city of San Francisco is the only party to interfere and claim title for its own by operation of this act. The city has always and does now acquiesce in the position of the Government of the United States in this suit, which gives the United States a perfect standing in court with reference to its right. If there are laches they are on the part of the city. But so long as the map has not been rendered, and the city has never sought to have it rendered, and the President of the United States has, anticipating such event, made his order, so long the United States has the right to maintain its claim in the courts, and its rights are undisputed.

A fair construction of the act of 1864 leads to the con-

clusion that the President was acting within his authority in making his order and reserving from its operation the particular land in dispute.

Let us examine section 5 of said act. It provides that the President may, within one year after the rendition to the general land office by the surveyor general of his approved plat, make his order reserving said land. While he is entitled to this notice, yet he is not compelled to await it in order to have jurisdiction. If the necessities of the Government call for the setting aside of this island for naval purposes as an immediate act, the President of the United States would not be compelled to await such rendering, which might, if delayed, bring the Government face to face with national emergencies. The only essence of time in the act is, that the order shall be made "within" one year from rendering the plat; and the date of the executive order, so long as it was after the passage of the act which authorized it, and within the maximum time permitted, would not be an essential element in determining the question of the authority or jurisdiction on the part of the executive. While the act of the surveyor general could, by acting in conformity with law, limit the time of executive action, he cannot confer it. There are no presumptions against the Government nor against its chief officer. The filing of the plat is in nowise a limitation upon his action, except in so far as it compels him before and "within" a given time to make his order. The rendering of the plat is a condition precedent to title. Title does not pass *eo instanti*, and in the absence of fulfilling the condition precedent, title could never become perfected. There is nothing in the act, nor in any other act, which compels the surveyor general to render said plat save upon a certain application to be made by the city, and

there is an absence of evidence that the city ever took action in the matter. The reasons why the surveyor general did not file his plat are presumed to be good. If they are not good, appellant should tell us why.

We submit that all of the intendments of the law are in favor of the sovereign; the city, if anyone, is guilty of laches and surely cannot profit thereby as against the sovereign where all favorable presumptions reside. This rule is so explicitly stated, so well guarded, that it becomes a part of every construction from the public to an individual. If the act required the map to be rendered within a certain time, then such time computed with the year following, might be construed as a limitation on the discretion of the executive. This is not the case. If the city has any rights under this section, it is authorized to enforce them in equity or in the act itself; and so long as the city does not seek to do this, it cannot work as a limitation against the grantor. There is nothing in the act compelling the surveyor general to render his plat unless it is the part which requires him to act upon the application of those mentioned as beneficiaries thereunder.

Why did not Congress say "within one year from the passage of the act," or within one year from some particular and definite date? It was simply intended that the filing or the rendering of the plat by the surveyor general should be in the way of a *notice* to the *Government of the United States, of the extent and area of the exterior limits of San Francisco.* Then upon such notice, the Government being *advised* as to the lands so comprehended could make its reservations within the exterior limits and with a knowledge of the lands therein. Why is not the surveyor general required to render his plat within a

given time? If then the United States is entitled to this notice and the notice is not given, it is not bound.

There is nothing in the point urged by appellant that the United States Government is bound by the laches of its own officer, the surveyor general. In the first instance the United States could not be bound for the nonperformance of a condition *directory* as to time. In the second place the officer spoken of in the act is the surveyor general of the State of California, and he is supposed to act only upon application of the city under section 6 of said act of Congress.

The act of July 23d, 1866, 14 Statutes at Large, p. 240, seems to settle the question of the passing of the title to these islands, as it takes all lands not confirmed to San Francisco, without the purview of the act of 1864. It provides in section 6 that if the surveyor general has not within a specified time filed his map, that "it shall be "the duty of the surveyor general of the United States "for California, as soon as practicable after the expira- "tion of ten months from the passage of this act, or such "*final confirmation hereafter made*, to cause the lines of the "public surveys to be extended over such land, and he "shall set off in full satisfaction of *such grant*, and accord- "ing to the lines of the public surveys, the quantity of "land *confirmed* in such *final decree*, and as nearly as can "be done in accordance with such decree. And all the "land not included in such grant as so set off, shall be "subject to the general laws of the United States."

It would appear that should the surveyor general cause the lines of the public surveys to be extended over such land, and should render his plat upon "such final confirmation," he is required to set off according to the lines of the public surveys, the "quantity of land confirmed in such final decree" and all the land, which of course includes Mission Rock, not included in such grant

so set off, shall be subject to the general laws of the United States. In other words, shall be a part of the public domain, because appellant confesses that lands subject to the general laws are public lands.

Except in this matter, there appears to be no law requiring the surveyor general to render his plat, and this law provides what the plat shall include, and that all parts excluded shall remain a part of the public domain, or subject to the general laws.

It is here seen that the act of 1864, in so far as it could part title to Mission Rock, has been repealed, and repealed before it could operate to pass title. At least Mission Rock has forever been taken from its purview.

The act of 1866 says that "all lands not included in such grant as so set off shall be subject to the general laws of the United States."

We find that the act of 1864 contemplates a plat to be rendered in connection with the public surveys.

We find that the act of 1866 requires such public surveys to be made and the exterior limits of San Francisco to be ascertained as determined by decree of confirmation. We find the plat is to be rendered according to such decree. We find Mission Rock not included; and we further find that it "shall be subject to the general laws of the United States." So whenever the plat is rendered, and Mission Rock is excluded, as it must be excluded according to the decree of confirmation, it becomes a part of the public domain and subject to the "general laws of the United States."

It is, however, contended by appellant in large type that, "The act of 1864 did not relinquish any claim of the United States to tidal lands or of rocks in the bay. Hence, the President's reservation of 'Mission Rock' was nugatory."

Let us admit this. What, then, are the conclusions?

First: That the title of the Government not being relinquished by the act of 1864, is reserved without executive order.

Second: That the executive reservation being "nugatory"—not being required—it did not effect to add to or take from an existing valid title.

If appellant's contention that Mission Rock passed to the State by virtue of sovereignty, what could the act of 1864 and the executive order thereunder avail, as title in such event would have passed to the State on the 9th of September, 1850? What comfort can appellant find in the idea that the Government did not lose title under the act of 1864?

Let us concede that the ordinance of San Francisco, the act of the legislature of California incorporating the city, and the act of Congress, *in pari materia*, are to be construed together as emanating from one legislative body.

That Mission Rock is not intended to be included as land to be reserved by the President in order to be reserved in law. We then find that the Government has such a title in the rock as it would be compelled to have in order to make the act of 1864 apply, if, by direct terms, it was made to apply. So we find that the Government has just as good a title without the act of 1864, as with it. Indeed, the effect of the reservation of the President would not need to be questioned; as in such case the reservation would be in law—the very highest law under the Constitution—a treaty.

The contention seems to be made that these islands passed to California as an incident to sovereignty. This pretense is extravagant and sometimes revolutionary.

Appellant contends that lands not classified for pur-

poses of public disposal are not public lands and pass to the State. If this is true, what kind of a limited title has the sovereign nation acquired by virtue of treaty-making power?

It is a contention that the Government cannot hold land as a proprietor, and that all territory passes from it unless specially reserved. This cannot be law; and the numerous decisions cited do not so contend.

We here advance the proposition that all land, unless otherwise provided, must be in the Government; if the Government has not provided laws especially applicable thereto, that such title shall remain unimpaired until the Government, in its wisdom, shall pass such laws.

In order that the United States may have title in the rocks, it is not necessary that they shall come within the classification of "public lands," as said terms are employed to designate certain land for public disposal.

Volume 10, Decisions of the Department of the Interior, says: "The words 'public lands of the United States' are used to designate such lands as are subject to sale and disposal under the general laws, and do not include all lands to which the United States may have the legal title, or lands that may be granted or disposed of by the United States."

This seems to hold that the lands of the Government not included within those classified as "public lands" may yet be lands to which the Government has title, and lands "that may be granted or disposed of by the United States."

It would seem a singular rule indeed that the Government, in order to retain title to its lands, should have to pass some law so classifying them as to require that they be disposed of at public sale.

This decision cites Newhall vs. Sanger, 92 U. S. 761, wherein it is said: "The words 'public lands' are habitually used in our legislation to describe such as are subject to sale or disposal under general laws"

It is seen under the law of 1851, as well as 1866, that all lands excluded from the surveys made in accordance with the decrees of the Courts, are to be subject to "general laws."

It is admitted that the right to dispose of the public lands shall remain unimpaired in the Government; and it must be admitted that the Government shall have its own time to enact its own laws providing for such disposal; and in the absence of any particular law including a particular character of land, where such land does not pass to the State by virtue of any sovereignty it possesses, the Government still has its title and may reserve the same, or may take some future and remote period to enact a law for its disposal; and there can be no inference under the rule which carries title in tide and submerged lands that would carry the title to the uplands, because the line to be drawn and the legal distinction to be made between the uplands and the tide lands are as clear and distinct as the reasons which separate them.

On page 369 of said decision it is held that uplands are those over which the public surveys have been extended, or over which it is contemplated to extend them that while it is the ordinary custom to extend the surveys only to the tide, yet this is not an infallible rule where there is a reason against it. If it was an infallible rule, the surveys would never be extended over the Government islands; and in this particular case we see by the records, that the public surveys were extended over this land in 1864.

By section 13 of the act of March 3, 1851, 9th U. S. Stats. at Large, page 633, it is provided:

"That all lands, the claims to which have been finally rejected by the commissioners in manner herein provided, or which shall be finally decided to be invalid by the District or Supreme Court, and all lands the claims to which shall not have been presented to the said commissioners within two years after the date of this act, shall be deemed, held, and considered as a part of the public domain of the United States."

We have already seen by the act of 1866 that "all the lands not included in such grant so set off shall be subject to the general laws of the United States."

It will be noticed that this act is a general clean-up; and after a period from 1851 to 1866, devoted by our Courts to the settling of land claims in California. It provides for the final survey of all lands confirmed by the Courts, and reserves a title in the Government to all lands not so included. This was simply declaratory of law, as it was intended that the Government was to guarantee to Mexican claimants certain lands and retain all other titles in uplands to itself.

What is the difference about the executive reservation under the act of 1864? If it was necessary under such act to make it, it has been made. If it was not intended by said act to include Mission Rock, then it was not intended that such executive reservation was necessary to title.

THE APPELLANT IN THIS CASE CLAIMS TITLE BY VIRTUE OF AN ACT OF THE LEGISLATURE OF THE STATE OF CALIFORNIA OF APRIL 4, 1870, STATUTES OF CALIFORNIA FOR 1869, PAGE 881.

A review of the language of this act becomes interesting in determining the extent of title derived from the State. Section 1 authorizes Henry B. Tichenor to make a survey of the lands "belonging to the State" situated in the city and county of San Francisco and included within those boundaries. Take in connection with this the language of said section after the descriptive part, and it speaks of the lands which shall be shown by such survey and map to lie below ordinary high-water mark"; that portion only to be assessed for its value, and to be paid for by the grantees. The patent issued thereunder recites: "Said tract being a tract including the rock known as Mission Rock, and containing 14.35-100 acres *exclusive* of said rock. Take the words "exclusive of said rock" in connection with the language of the statute which authorizes the issuance of the patent, the whole design of the legislature seems to have been to except from the operation of its statute, Mission Rock itself. This seems to be conformable to the idea that the State had its right in the tide and submerged lands, or, as the statute said, "that which lies below ordinary high-water mark"; and that it had not the right to grant that piece of land which is described in the patent itself in the language as "said rock." The title of the rock seems by this to have been left entirely without the purview of the act. We do not consider for an instant that the State, had it so desired, could have granted title to the rock, but urge this to show that it did not so intend, and that its inten-

tion was governed by the knowledge that it had not the right.

In the latter part of section 2 of the act of the legislature above quoted, we find a proviso which reads:

"That such patent shall not be issued until such Tichenor, his heirs or assigns, shall have constructed a marine railway or drydock at said Mission Rock."

If there was any question as to the intent of the legislature of the State of California to exclude Mission Rock and the adjoining rock, it might be cleared by a reference to its title: "An act to provide for the sale and conveyance of certain submerged lands," etc. It is noticed in this that it refers exclusively to submerged lands; not to the rock itself, nor does it deal with the tide lands, which, as is shown in this case, were insignificant and could not properly be so classed. In fact, the lands covered and uncovered by the ebb and flow of the tide were only those on the sides of the rock which were steep and precipitous. That the legislature intended to grant simply an easement in these submerged lands, in order that such easement might subserve a public purpose, is illustrated in the condition annexed that the grantee was required to construct a marine railway at the rock. In so far as the grant evidenced any other intention, it was void. So far as the essence of this easement becomes destroyed, the title thereto becomes void. It was never contemplated that he could fill in and make more land upon which to construct a railway, but that it should be constructed "at the rock"; and it was properly supposed at the time that the submerged lands would be used for a general utility in building wharves and perfecting other structural conditions for shipping. We have seen that the very easement has been destroyed; that that quality and essence which made it possible for

the State to own it as an incident to sovereignty has been removed, and that it has been replaced by land which has added to the area and extent of the public domain. It is seen that the filling in of the submerged lands around the rock was not of the condition precedent to patent, was not done before patent issued, and, as a matter of fact, was never contemplated in the intent and meaning of the grant. If there is a reversion of title, where does it lie? Is it in the State, whose grantee has destroyed the essence of its sovereignty? No; it lies not in the State, which would in that instance be taking advantage of its wrong, but the reversion would lie in the general Government, reserving title without impairment to its public domain; it would lie in the littoral owner who has the primary right to all incidents of title. Now, the query is, What kind of title could the State grant in submerged lands to people or persons other than the littoral owner? Modern decisions all point to the theory in law that so far as the title of the State is concerned in its submerged lands, it is a title conferred only by reason of its sovereignty, and in this it will be found incident to sovereignty only because it is necessary in the exercise thereof. This seems to qualify the title of the State in its tide lands and submerged lands, and to make of it a usufruct or an easement to be held in trust for the people of the United States as well as for the people of the State.

In the great case of Illinois Central Railroad Company vs. Illinois, 146 Federal Reporter, 434, this doctrine was thoroughly sifted. The legislature of the State of Illinois had, by grant given to the railroad company, along the shore of the lake quite a wide extent of land running into the lake. This land was filled in, and the very source of title was destroyed under which the railroad

company maintained its claim. The legislature of the State repealed the law granting the land, and it was held, in that instance, that the state had but the trust; that it could grant nothing else, and that a destruction thereof ended the title of the company. It will be noticed that the title of the State by Tichenor was in the nature of a trust or an easement.

It is well to review the doctrine of State sovereignty in its submerged lands to see how far and to what extent it might be invoked to the utter destruction of the proprietary rights of an individual or of the general Government. The doctrine of State sovereignty in lands covered by navigable waters finds its first enunciation in the celebrated case of Pollard's Lessee vs. Hagan, 3 Howard, 212. In reviewing this case it is necessary to take into consideration the conditions of the country at that time, the traditions which hemmed in our nation's progress, and which of necessity had to be dissipated by the onward march of civilization.

The doctrine is laid down, and it is unquestioned, that the State of Alabama is admitted into the Union upon an equal footing with the original States; but it will be noticed that in that celebrated case the reason given therefor is that the territory which included Alabama was ceded to the Government, and all the intents and purposes in the deeds of cession were to be carried out in the formation of the new State; in other words, it is substantially held that the title to the public lands never passed to the general Government absolutely, but that they were held in trust, the conditions of which were expressed in the acts of the legislature of Virginia and Georgia. While it is admitted that all of the new States came into the Union upon an equal footing with the oiginal States, so far as their sovereignty is concerned,

yet we submit that when it comes to a question of tenure of lands, that acquired by the general Government under subsequent treaties rests upon a different idea, and that the general Government is never obligated in these modern instances with the peculiar trusts incident to the grants of cession from the States.

It appears with reference to the Northwest Territory and the other territory ceded to the Government by the States that those States making the cessions were the grantors. The Government of the United States as grantee held it *temporarily* and in trust for the States to be formed. We have grown out of that; the national breadth and growth of the country, its emergencies and exigencies, have taken us beyond the scope of such a construction. The United States owned all of the land in California as a primary and absolute owner, charged only with the trust of preserving to the grantees under the Mexican Government titles to certain lands. For the purposes of municipal sovereignty, the *jus publicum* in the land under navigable water was reserved for and finally passed to the State. These are the only conditions which take lands from the purview of absolute ownership, remaining in the Federal Government.

Let us review for a moment the decision of the learned Judge in Pollard's Lessee vs. Hagan. If we find fallacies enunciated, yet at the time deemed sound, that is one reason why we must view with apprehension, much of the tenor of that decision as it relates to the present. In order to illustrate the narrow limits within which it would confine the sovereignty of the nation, we desire to make a few quotations from it. "We think a proper examination of this subject will show that the United States never held any municipal sovereignty, jurisdiction, or right of soil in and to the territory of which

Alabama or any of the new States were formed, except for temporary purposes, and to execute the trust created by the acts of the Virginia and Georgia legislatures," etc.

The doctrine which holds that the general Government could hold the land only for "temporary purposes," might have been in consonance with a fair construction of the deeds of trust from the older States with reference to those lands; but can it be applied to the sovereignty over the public domain of the country acquired from sources other than from said States? Could it apply to land since acquired by the Federal Government by virtue of the exercise of its sovereign right and power? No. But with reference to all of the lands acquired under the treaty of Guadalupe Hidalgo, the Federal Government is a sovereign standing upon an equal footing with the most powerful nations of the earth.

One of the conditions of the deeds of trust with reference to the lands given by the States was, that all of the land "not reserved or appropriated to other purposes should be considered as a common fund for the use and benefit of all the United States, to be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatever." Is it fair to say that, in order to concede to California an equal footing with the original States, the Government of the United States, with reference to the lands within the limits of this State, is cribbed and crammed by the same qualifications of title implied in the language above quoted? Most of the land ceded to the States in those early times were made subject to a Government provided in the Ordinance of 1787, enacted at a time when the States had the full measure of sovereignty as nations, and before they had yielded them in our present Constitution. It provided, of course,

that the States to be formed out of the cession known as the Northwest Territory should be upon an equal footing with the original States in all respects whatsoever. The Ordinance of 1787 was a great document. Many of its expressions guaranteeing Republican Government were preserved in the Constitution which followed it. We cannot, in all respects, follow it with a strict construction. Within the original States the Federal Government never owned an acre of land, and never was in respect to anything a grantor. The great trouble about the decision to which I am referring is that it is too narrow and confined for the times in which we live. Its idols long ago have been shattered, and the country is now marching upon a broader domain. As an illustration of this, let me point to the fact that the decision held that the United States did not have the sovereignty of "eminent domain." To quote its language:

"And, if an express stipulation had been inserted in the agreement granting the municipal right of sovereignty and eminent domain to the United States, such stipulation would have been void and inoperative because the United States have no Constitutional right to exercise municipal jurisdiction, sovereignty, or eminent domain within the limits of the State or elsewhere except in the cases in which it is expressly granted."

It would be a waste of time to show in how many instances this doctrine has been overthrown, and how the exercise of municipal jurisdiction and sovereignty, with reference to eminent domain, is evidenced by the proceedings of our Courts almost monthly.

The decision further says, speaking of Alabama, that "She succeeded to all the rights of sovereignty, jurisdiction, and eminent domain which Georgia possessed at the date of the cession, except so far as this right was

diminished by the public lands remaining in the possession and under the control of the United States, for the temporary purposes provided for in the deed of cession and the legislative acts connected with it." In other words, the United States, under the deeds of cession from the original States, never held a foot of land as a sovereign, but as a trustee for temporary purposes; and when the State was once formed, municipal sovereignty, even in reference to eminent domain, passed beyond the United States and to the State.

It further speaks of the right of the United States in and to these lands as follows: "This right originated in voluntary surrenders made by several of the old States of their waste and unappropriated lands to the United States, under a resolution of the old Congress of the 6th of September, 1780, recommending such surrender and cession, to aid in paying the public debt incurred by the war of the Revolution. The object of all the parties to the contracts of cession was to convert the land into money for the payment of the debt, and to erect new States over the territory thus ceded; and as soon as the purpose could be accomplished, the power of the United States over these lands, as property, was to cease."

It can be understood by this language that in determining the quality of the title of the United States to these lands, reference had to be made to the resolution of the old Congress of the 6th of September, 1780, which recommended to the States these cessions in aid of the Government in discharging the debt of the revolution. This was before the adoption of the Federal Constitution and before the present Government was charged with its responsibilities and given any degree of sovereignty. We know how lame and halt a thing the Government was under the articles of Con-

federation; and it might have well been anticipated at that time, lacking sovereignty as it did, that it was unable to hold these lands except in trust.

Further the decision says: "We, therefore, think the United States hold the public lands within the new States by force of the deeds of cession, and the statutes connected with them, and not by any municipal sovereignty which it may be supposed they possess, or have reserved by compact with the new States for that particular purpose. The provision of the Constitution above referred to shows that no such power can be exercised by the United States within a State. Such a power is not only repugnant to the Constitution, but it is inconsistent with the spirit and intention of the deeds of cession."

This refers to the 16th clause of the 8th section of the first article of the Constitution.

The learned Court determined that the United States held the lands by virtue only of the deeds of cession and not by virtue of any sovereign right over the territory. Is it not admitted now, that what the United States owns in the way of public domain is by virtue of her sovereign treaty making power, and that she holds the sovereign right of eminent domain over all of her territories.

I have not quoted from the language of this decision for the purpose of in anywise disturbing the doctrine of the sovereignty of a State in its tide and submerged lands, but simply to show the growth of our system with reference to the public domain, and to illustrate the growth of the right of the general Government in its own territory on the one hand, and on the other, the absurdity of the proposition that the municipal right of sovereignty existing in the State Government can be invoked to disturb or destroy the right of the general

Government in and to the things which it possesses, not as grantee from the State, but by virtue of a treaty which it had the right to make.

In Black's Pomeroy on Water Rights, section 237, under the head "Title of the United States to the Tide Lands of Territory," we find this very decision discussed, and I will quote some of the language: "It is true that a new State must be admitted into the Union on an equal footing with the older States, but this does not imply that it must be an owner of an equal amount of territory, or equally the source of title to all the lands within its boundaries. If this were so, the United States would never dispose of an acre of public land, inland or shore. The equality spoken of is political equality. And the sovereignty of the new State has nothing to do with its proprietary rights. Though it may not own any portion of its shore, it is sovereign over that shore, as much as over any portion of its territory. For it will always retain the *jus publicum*, which can never be alienated either by the United States or by the State itself. It is this alone which is held in trust for the future State. And the remarks made in Pollard's Lessee vs. Hagan can properly be carried no further than this.

Further: "The true doctrine is, that the United States may validly sell or otherwise dispose of the tide-lands bordering the coast of a territory, subject to the municipal control, or police jurisdiction, or the *jus publicum* of the future State; and that when that State is admitted into the Union, it acquires the control as sovereign over all its shore, and as sovereign and as proprietor over all such lands not previously granted away by the United States."

In other words, the title of the United States is by virtue of its sovereignty and not as a trustee; and should

it dispose of tide or submerged lands in this territory, the future State is bound by its grant, so far as the *jus privatum* is concerned.

Further quoting from section 237: "The rights and power of the general Government in respect to land of which it is the proprietor cannot thus be restricted on the fanciful notion of a 'trust' for a possible future State. It would scarcely be contended, for example, with any degree of seriousness, that the United States cannot lawfully convey to private persons lands embracing portions of the shore of Behring Sea, merely because in the remote future Alaska may possibly be erected into a state."

In the case of Case vs. Toftus, 39 Fed. Rep. 730, arising in the State of Oregon, a learned and accomplished Judge gave his views upon the question as to the power of the national Government in its public domain. He accepts the theory first enunciated in Pollard's Lessee vs. Hagan, that the ownership of the tide and submerged lands are an incident to the sovereignty of the State. He says: "How or why this is so, except to bolster up some fanciful notion of State sovereignty, I never could perceive."

In quoting this, it is not with the design of discrediting the doctrine, but in order to show that its operation must necessarily find a check in the mind of modern thinkers, in view of the many grave questions to be settled within the rights and sovereignty of the Nation.

He further says, referring to the case of Hinman vs. Warren, 6 Or. 408: "The Court went further and held that the United States cannot dispose of the tide lands, even in a territory. This decision is also based on the dogma of State sovereignty; that is, the sovereignty of a

State *in futuro*, which is yet, so to speak, *in utero*, or the womb of time, and may never be born."

To show that the construction of the words "upon an equal footing with the original States" means a political equality, he uses the following language: "But what is considered, and has been held by the Supreme Court to be the general character and purpose of the Union of States as established by the Constitution, is a Union of political equals." In other words, the equality between the States does not rest upon the obligations created in the grants of cession by the original States to the general Government of territory, but it is a constitutional equality guaranteeing for all of the States a Republican form of Government.

The learned Judge further says: "The true constitutional equality between the States only extends to the right of each, under the Constitution, to have and enjoy the same measure of local or self Government, and to be admitted to an equal participation in the maintenance, administration, and conduct of the common or national Government.

We find in the celebrated case of Illinois Central Railroad Company vs. Illinois, 146 Federal Reporter, 434, the following language:

"The State of Illinois was admitted into the Union in 1818 on an equal footing with the original States in all respects. Such was one of the conditions of the cession from Virginia of the territory northwest of the Ohio River, out of which the State was formed. But the equality prescribed would have existed if it had not been thus stipulated. There can be no distinction between the several States of the Union in the character of the jurisdiction, sovereignty, and dominion which they may possess and exercise over persons and subjects within

their respective limits. The boundaries of the States were prescribed by Congress and accepted by the State in its original Constitution."

So we see by this that the equality depends upon the fact that they are States under the Constitution, and not that they have received particular sovereign powers delegated or prescribed by the deeds of cession from the original States.

While that is a doctrine too familiar now to discuss, yet it reminds us of the primary principles, and shows the fair and broad construction placed upon it by the fathers of the Constitution. It points out the false prophecies lurking under the shadow of State's rights, and tends to show the modern tendency to again go back to first principles and view the power of the Government as the outgrowth of the same.

Discussing again the case of Toftus, the learned Judge says: "In the territories the National Government is both the sovereign and proprietor. Congress has the power to govern them, and in so doing exercises the combined power of the National and State Governments.

[Citing Insurance Co. vs. Canter, 1 Peters, 542.]

"And as such sovereign and proprietor it may dispose absolutely of all the public land in the territory, whether high or low, wet or dry. For the time being, as sovereign, it has the *jus publicum*, or right of jurisdiction or control of the shores for the benefit of the public, as in the case of a public highway over private land; while as proprietor it has the *jus privatum*, or right of private property, subject to the *jus publicum*."

It will be noticed in this particular case in controversy that the Federal Government had the *jus privatum*, the rights of a proprietor in the rocks, and that those rights were retained and never passed to the State.

In order to show that the United States holds the absolute title to its territory, and not in trust for the future State, I will quote from the same learned Judge in the case of Shively vs. Welch et al., 20 Fed. Rep. 32:

"Upon the admission of the State into the Union, such bed and shores, *not otherwise disposed of* by the United States, became the property of the State in its sovereign capacity, and subject to its jurisdiction and disposal."

It is seen that the United States has the right to otherwise dispose of the same prior to the formation of the new State.

Further, the Court says: "In every such grant there was an implied reservation of the public right, and so far as it assumed to interfere with it, or to confer a right to impede or obstruct navigation, or to make an exclusive appropriation of the use of navigable waters, the grant was void."

This appears to have set out clearly the fact that the grant was void so far as it seemed to convey the right to obstruct navigation. Let us ask: Did it not in this particular instance assume to convey the right to obstruct navigation? Can it be pretended that a limit placed upon the action of appellant by the Government engineers would make a grant valid, which, upon its face, was void?

It seems the avowed purpose of appellant in carrying out what it contends are the rights conveyed, to clearly and absolutely obstruct and impede navigation by the filling in of the submerged lands to the extent of four acres.

The Court, again quoting from Mr. Justice Best, in Blundell vs. Catterall, 5 B. & A. 268, says: "The soil can only be transferred subject to the public trust, and gen-

eral usage shows that the public right has been accepted out of the grant of the soil."

Further quoting: "There can be no irrepealable contract in a conveyance of property by a grantor in disregard of a public trust, under which he was bound to hold and manage it."

THE STATE COULD NOT GRANT A FEE IN ITS SUBMERGED LANDS.

Passing from a review of this particular matter, it might be observed that the United States Government has created what is known as a public land system. It now embraces plans not contemplated by those ordinances passed to form a territorial Government in the Northwest Territory. It pertains to all of the new States, and recognizes the Government, sometimes as a municipal, and always as a proprietary, owner. It has granted land for purposes which have grown out of modern emergencies, and as the owner of land in the State of California, its title is as absolute after the formation of the State as before. Its ownership of Mission Rock, therefore, is not to be qualified by a strict construction of the principles laid down in Pollard's Lessee vs. Hagan; and, on the contrary, whatever is incident to title, whatever the United States may give to its grantee, it reserves for itself. Its title, then, in Mission Rock is absolute.

Let us look into the question of the title of the State in its submerged lands in and around Mission Rock and embracing within its exterior boundaries, the land in dispute. We contend, primarily, that the State as it comes into existence has, in the lands covered by the bay, the *jus publicum;* that in those lands, so far as they have not been otherwise disposed of by the United States

at a time prior to the formation of the State, it has the *jus privatum;* that in the *jus privatum* the quality of title is necessarily strained, in that it must forever subserve the interests of the *jus publicum.* In these particular lands, exclusive of Mission Rock, the State had the *jus publicum* and the *jus privatum.* And in so far as the former was not destroyed; in so far as it was not crippled nor hemmed in, nor interfered with nor obstructed; in so far as its essence remained whole and complete, the State could alienate the latter for certain purposes, but could never give a private title which would, in a measure even, destroy the trust of which the former is the essence. This is the limit of the sovereignty and authority of the State. It must be so.

In support of this doctrine we find reference to a comparatively recent case of the very highest authority. It is the case of the Illinois Central R. R. Co. vs. Illinois, 146 U. S. 387. The legislature of that State had granted to the Illinois Central Railroad Company certain tide or submerged lands in Lake Michigan. These lands had been filled in and converted by the company into uplands, and the legislature of the State repealed its act granting the land, and the repeal was held to be constitutional.

It cannot be comprehended how a title can be destroyed, if it is really a title in fee, by a simple repeal of an act of the legislature giving the title. So it must be held that the repealing clause was in the nature of a revocation of franchise. The Court seems to have held the repealing act valid; and the doctrine would seem to be established that a suit in equity to set aside the title was not necessary; and this construction seems to lead to the idea that the State never gave her title, but simply

that use or franchise to which, under her system, the State was limited.

Applying the same doctrine in the Mission Rock case, the State never did give its title to the lands in dispute. It needs no suit in equity on the part of the State to revoke the same, but, on the contrary, the State simply gave its franchise in and to its submerged lands, which long ago has been forfeited by the utter destruction and abandonment of the same.

Quoting from a learned Judge, who rendered the opinion, and whose memory has received the honor and respect of this Court, in speaking of the English doctrine, he says:

"The public being interested in the use of such waters, the possession by private individuals of lands under them could not be permitted except by license of the crown, which could alone exercise such dominion over the waters as would insure freedom in their use so far as consistent with the public interest. The doctrine is founded upon the necessity of preserving to the public the use of navigable waters from the private interruption and encroachment, a reason as applicable to navigable fresh waters as to waters moved by the tide."

The idea of preserving the waters of the bay and the lands under them for navigable purposes and purposes of commerce seems to suggest the necessity of preserving the essence of the *jus publicum*. While it is the province of the general Government to regulate and control navigation, yet it is a duty devolved upon the State—a duty which she owes to the people to so preserve her title in these classes of lands as not to permit of a private encroachment upon these great rights. Contemplate this case under the light of this doctrine. What becomes of the right of the people in and to the waters of the bay?

What becomes of the State itself? Pertinent to this I will quote from the decision as follows:

"The railroad company never acquired by the reclamation from the lake of the land upon which its tracks are laid, or by the construction of the road and works connected therewith, an absolute fee in the tract reclaimed, with a consequent right to dispose of the same to other parties, or to use it for any other purpose than the one designated," etc.

Again: "All lands, waters, materials, and privileges belonging to the State were granted solely for that purpose." Mind you, the words "to grant" purported to convey a fee, and were stronger as against the grantor than the words of that grant through which appellant claims its title from the State.

Again: "It did not contemplate, much less authorize, any diversion of the property to any other purpose. The use of it was restricted to the purpose expressed."

It would occur that it would be immaterial as to the language expressed in the deed, or whatever its expression might be, because it cannot contravene public policy nor the rights of the public; and I have called attention to the language of the grant in this case to show that we might reasonably expect that it was considered by the Court merely a franchise.

In the Illinois case the land in question was "granted in fee to the railroad company, its successors and assigns." It is true that there was a condition in the grant which prevented obstructions to the harbor or an impairing of the public right of navigation. We apprehend that this restriction would have been preserved by law, outside of any language in the deed itself.

The Court, in commenting upon the language of the grant, says:

"This clause is treated by the counsel of the company as an absolute conveyance to it of title to the submerged lands, giving it as full and complete power to use and dispose of the same, except in the technical transfer of the fee, in any manner it may choose, as if they were uplands, in no respect covered or affected by navigable waters, and not as a license to use the lands subject to revocation by the State. Treating it as such a conveyance, its validity must be determined by the consideration, whether the legislature was competent to make a grant of the kind."

In commenting upon this language it is noticeable that "and not as a license" is language used with more than ordinary significance. It seems to embody a direct implication, carrying with it a construction that the grant was a license, etc.

The Court, also commenting upon the grant made by the legislature says:

"And the inhibitions against authorizing obstructions to the harbor and impairing the public right of navigation placed no impediments upon the action of the rail road company which did not previously exist."

This must be true, and whatever the language of the act of the legislature might have been, the only inference to be drawn from this language is, that it could not supersede the legitimate power of the legislature itself in disposing of its title, and the limit of that disposal is found where it encroaches upon the *jus publicum;* or, in other words, interferes in all or any of those essentials of right which pertain to the people.

Further quoting: "The question, therefore, to be considered is whether the legislature was competent to thus deprive the State of its ownership of the submerged lands in the harbor of Chicago, and of the consequent control

of its waters; or, in other words, whether the railroad corporation can hold the lands and control the waters by the grant, against any future exercise of power over them by the State."

Speaking of the title of the State in its soils under the water, the Court says:

"But it is a title different in character from that which the State holds in lands intended for sale. It is different from the title which the United States hold in the public lands which are open to pre-emption and sale. It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties."

Speaking of this title of the State, the Court says:

"But that is a very different doctrine from the one which would sanction the abdication of the general control of the State over lands under the navigable waters of an entire harbor or bay, or of a sea or lake. Such abdication is not consistent with the exercise of that trust which requires the Government of the State to preserve such waters for the use of the public. The trust devolving upon the State for the public, and which can only be discharged by the management and control of the property in which the public has an interest, cannot be relinquished by a transfer of the property."

It will be noticed that the case at bar presents a much stronger reason against the grantee than the Illinois case. While in the Illinois case the land involved was more considerable in extent, yet it was along the shore and was not in the nature of a considerable encroachment upon the navigable waters of the lake. It was simply extending the shore line. This case is far different.

While the prescribed possibilities of area are fourteen acres, yet upon that fourteen acres the Mission Rock Company proposes to be monarch of what it surveys—an empire unto itself. And if, in some future history of our State Government, it can avail itself of its delegated sovereignty, it may carry its work of invasion until it reaches the shore.

Still further commenting the Court says:

"General language sometimes found in opinions of the Courts, expressive of absolute ownership and control by the State of lands under navigable waters, irrespective of any trust as to their use and disposition, must be read and construed with reference to the special facts of the particular cases. A grant of all the lands under the navigable waters of a State has never been adjudged to be within the legislative power; and any attempted grant of the kind would be held, if not absolutely void on its face, as subject to revocation. The State can no more abdicate its trust over property in which the whole people are interested, like navigable waters and soils under them, so as to leave them entirely under the use and control of private parties, except in the instance of parcels mentioned for the improvement of the navigation and use of the waters, or when parcels can be disposed of without impairment of the public interest in what remains, than it can abdicate its police powers in the administration of government and the preservation of the peace. In the administration of government the use of such powers may for a limited period be delegated to a municipality or other body, but there always remains with the State the right to revoke those powers and exercise them in a more direct manner, and one more conformable to its wishes. So with trusts connected with public property, or property of a special character, like

lands under navigable waters, they cannot be placed entirely beyond the direction and control of the State.

"The harbor of Chicago is of immense value to the people of the State of Illinois in the facilities it affords to its vast and constantly increasing commerce; and the idea that its legislature can deprive the State of control over its bed and waters and place the same in the hands of a private corporation created for a different purpose, one limited to transportation of passengers and freight between different points and the city, is a proposition that cannot be defended."

Some of the language above is especially observable and applicable in view of the interest in this case.

To requote: "And any attempted grant of the kind would be held, if not absolutely void on its face, as subject to revocation."

I apprehend that the Court in that case held that it was absolutely void in so far as it was a grant, because if it had been otherwise, it would have acquired an adjudication in equity to determine the same. If it had been construed as a grant, the legislature of the State could not have set it aside, because this is peculiarly the province of equity. But the fact that the legislature of the State did set it aside, and was held to have the power to do so, shows that it must have been nothing more than a franchise, as it was considered by the Court. Looking at it in that light, the Government of the United States cannot be held in this suit as having attacked a title collaterally.

The Court further says:

"It is hardly conceivable that the legislature can divest the State of the control and management of this harbor and vest it absolutely in a private corporation. Surely an act of the legislature transferring the title to

its submerged lands and the power claimed by the railroad company to a foreign State or nation would be repudiated, without hesitation, as a gross perversion of the trust over the property under which it is held. So would a similar transfer to a corporation of another State. It would not be listed so that the control and management of the harbor of that great city—a subject of concern to the whole people of the State—should thus be placed elsewhere than in the State itself. All the objections which can be urged to such attempted transfer may be urged to a transfer to a private corporation like the railroad company in this case.

"Any grant of the kind is necessarily revocable, and the exercise of the trust by which the property was held by the State can be resumed at any time.

"We cannot, it is true, cite any authority where a grant of this kind has been held valid, for we believe that no instance exists where the harbor of a great city and its commerce have been allowed to pass under the control of any private corporation. But the decisions are numerous which declare that such property is held by the State, by virtue of its sovereignty, in trust for the public. The ownership of the navigable waters of the harbor and of the lands under them is a subject of public concern to the whole people of the State. The trust with which they are held, therefore, is governmental and cannot be alienated, except in those instances mentioned of parcels used in the improvement of the interest thus held, or when parcels can be disposed of without detriment to the public interest in the lands and waters remaining."

The learned Judge in reviewing the decisions upon these questions and quoting from the Supreme Court of the State of New Jersey says as follows: "The sovereign power itself, therefore, cannot consistently with the prin-

ciples of the law of nature and the constitution of a well-ordered society make a direct and absolute grant of the waters of the State, divesting all the citizens of their common right. It would be a grievance which never could be long borne by a free people."

THE RIPARIAN OWNER HAS THE FIRST RIGHT TO THE SOIL ADJACENT TO HIS UPLANDS.

We have endeavored to show in the foregoing that the United States Government can be the absolute owner of land; that it can stand in the same relation to property as the corporation which it creates, or the people whose sacred rights it insures. And this leads us to the conclusion that it can be a littoral or riparian owner, and as such subject to the benefits of accumulation and accretions, and invested with the rights pertaining to such property.

Admitting that the United States owned the rock known as Mission Rock and the adjacent rock; that the United States never parted with title, then the Government has the right to invoke the law which pertains to property, just the same as an individual—just the same as one of its own grantees. This premise leads us to the investigation of some primary and ruling principles pertaining to property rights, and first as to riparian ownership. This doctrine is not limited in its application to running streams over lands, but it is coextensive with the domain of water.

The Government of the United States stands in the ordinary relation of a proprietor; even if its municipal sovereignty ceases, it still has every proprietary right.

In Vansicle vs. Haines, 7 Nevada 249, it is held that the Government, as a riparian owner, stands in the same relation to its property as an individual.

The question of riparian ownership is discussed in Black's Pomeroy on Water Rights and shows the general tenor of the decisions, and the recent changes which the Courts have made. In chapter 13, section 229, the rule is laid down that "the rights of a riparian owner on a navigable stream are substantially the same as those enjoyed by a proprietor bounding on a nonnavigable stream."

These rights of course pertain to somewhat of a different problem in so far as they relate to those ordinary privileges incident to the shore. And it is held in that authority that these rights "depend upon the ownership of land contiguous to the shore, and are the same whether the proprietor of such land owns the soil under the water or not. This seems to be a quotation from Gould on Water Rights.

This authority refers to a decision rendered by Mr. Justice Miller in Yates vs. Milwaukee, 10 Wall. 497. There it is explicitly laid down that the owner of land bounded by a navigable stream is entitled to riparian rights, and among those rights are access to the navigable part of the river from the front of his lot, and the right to make a landing, wharves, and piers for his own use or for the use of the public, subject to such general rules and regulations as the legislature may seem proper to impose for the protection of the rights of the public.

One of the significant features of this decision is, that it holds riparian right as property and of value, and while it must be enjoyed in subjection to the rights of the public, it cannot be arbitrarily or capriciously destroyed or impaired. It is a right of which, when once vested, the owner can be deprived only in accordance with established law, and, if necessary, that it be taken for the pubic good, upon due compensation.

This is simply a repetition of the rule, because we find it laid down in many decisions. It is indisputable that this riparian right, while a fiction in law, an incident merely, is yet esteemed by the authorities as property and valuable, and cannot be taken except through that constitutional test of which the public only can avail itself, to wit, due process of law and just compensation. If this is true it must be given its full and entire constitutional comprehension. In the particular instance in dispute we have found that the property was ruthlessly taken without compensation and without due process of law, and it must thereby be inferred that if it required a suit in condemnation, that the condemnation must have been for a public and not a private purpose; and without that suit title to these lands could never have passed to the appellant.

The learned Judge further says, that these rights could not even be impaired by the State for public works without such just compensation. These ideas are simply included within the doctrine that the only right in these particular submerged lands paramount to the right of the littoral owner was in the public, and only for the purposes of public utility, and any other source of title must result in failure. It is the riparian owner first, who has the right to construct wharves in front of his land or to fill in, if filling in is necessary and not in contravention of public policy, and it must follow that if someone else, a stranger, fills in the submerged lands surrounding him, that such filling in must inure to the person having the right primarily to do the filling.

This rule is carried out in relation to all real property, and bears upon the fixing of anything permanent on land belonging to another.

If it is claimed in this case by the appellant that the

Government of the United States acquiesced in the extension of its domain, in the filling in of these submerged lands, such acquiescence on the part of the Government could only be esteemed as an implied license on the part of the libelant to extend the land of the Government. The fact that the engineers of the Government marked the exterior lines to which these improvements could be carried is not in favor of the position of appellant, but is in favor of the position of the Government which was at that time exercising not only control over navigable waters, but an authority as a proprietor in and to the things pertaining to its own domain. This doctrine has so permeated our system that New York has adopted it as a law; and it is provided by statute that the land under the navigable waters cannot be granted by the State "to any person other than the proprietor of the adjacent land." This refers to proprietors of the adjacent uplands, 114 N. Y. 423, 21 N. E. Rep. 1066.

In section 240, chapter 14, *supra*, the author shows that the littoral owner has certain valuable rights which are property, and which cannot be taken from him without just compensation; and that if the State makes a grant of tide lands to a stranger, if the effect is to cut off the littoral owner from his access to the water, he must be compensated for the deprivation. In other words, it cannot be taken without due process of law.

And in section 244, the author, carrying this doctrine to its legal conclusions, lays down the rule that the littoral owner is vested with valuable rights and privileges; as that of access from his land to navigable water; the right to extend his land into the water by means of wharves, etc., and the right under the law of accretions to whatever lands by natural or artificial means are reclaimed from the sea.

It seems by this that he is entitled to the accretions, natural or artifical, as a littoral or riparian owner. And the authorities are uniform on the proposition that accretions, in order to inure to the benefit of the littoral owner, include those entirely artificial as well as those brought about by the force of natural laws. Between natural and artificial accretions no distinction is made. And it is so in this case; the Government owning Mission Rock would be entitled to all accretions which had gathered around it, whether through the process of the ages or by the hands of the Mission Rock Company working for its own investment and profit.

The learned author, in section 245, says that "the vast preponderance of authority, both in England and the United States, recognizes the existence in the littoral proprietor of a right of access from his land to the water, or of free communication between his land and the water, which is a valuable property right, and of which he cannot be deprived without due compensation."

And he observes that it is singular that the correctness of this proposition should be questioned, and styles the tenacity to the opposite doctrine as a "legal heresy."

In a subsequent section he shows how, at one time, the Court of Appeals of New York recognized an opposite doctrine; that the decision was followed in other States, and that thereby a fallacy in jurisprudence grew up and gained a foot hold until at last the Court in New York reversed itself and went back to original principles. And from that time, in that State, there has been no question as to the rights of the littoral owner, and this doctrine has taken new life and is fast growing in all of the States.

Of course, it is conceded always that whatever the rights of a littoral owner may be, they are subservient to

the rights of the State so far as the State manifests its sovereignty for the purpose of a proper control and regulation of the navigable waters within its boundaries.

And it is contended by this authority, in section 247, that the Supreme Court of the United States has settled this doctrine in the cases of Dutton vs. Strong, 1 Black, 23, Railroad Co. vs. Schurmeir, 7 Wall. 272, and Yates vs. Milwaukee, 10 Wall. 497.

Speaking of the Supreme Court the author says that "some of its later utterances may seem, at first sight, to militate against this statement. But the apparent discrepancy will vanish the moment they are examined with reference to their particular facts," and from that point further discusses the question.

Another authority quoted with reference to this is St. Louis vs. Rutz, 138 U. S. 226, 246.

The author observes: "That the inferior Federal Courts have uniformly agreed in supporting the same view. Thus, in a case in the Circuit Court for the Southern District of New York, it was held that where the owner of land is bounded on navigable water, he has a vested right to have the water remain contiguous to his property; and hence it is not permissible for the State, or its grantee of the land lying under the water, to fill into the water and build a new waterfront before such owner's land, and so cut off the landing from the water. The State, having granted land bounded on a way, cannot afterward remove the way without compensating the party injured." Citing Van Dolsen vs. Mayor of New York, 17 Fed. Rep. 817.

And in further discussing the English decisions, the author observes that "the riparian owner's right of access in that country is recognized and vindicated with equal clearness and emphasis."

In discussing the change in the attitude of the Courts, and especially with reference to the Courts of New York, the author says that "in 1889 a case arose in which the Court of Appeals ruled that the statute which authorized the grant of submerged lands only to the proprietors of the adjacent uplands amounted to a recognition of a right in such proprietors to have access to the water from their own lands." Citing Rumsey vs. New York, *supra.*

It will be noticed that in some of the States this doctrine is carried so far as to hold that the owner of a fee takes his land to low water mark; recognizing that the tide land is an appurtenant to his property.

In section 247 the author says that "the riparian rights are property, and cannot be taken away without paying just compensation therefor. Finally, the most approved textwriters agree in the opinion that the doctrine settled by the cases cited in this section is the only true and just doctrine on this subject. The theory that denies to the littoral owner the right of access as a valuable property right is characterized by them as founded on a 'narrow and technical course of reasoning,' as 'of at least doubtful authority,' and as open to very serious objection on grounds of constitutional law."

The author, in a subsequent section, holds that in California the precise question of a littoral owner's right of access to the water has never been passed upon, and intimates that the attitude assumed by the Courts with reference to the construction of wharves are foreshadowed and contrary to the decisions.

It is to be hoped that California will follow in the line of the Supreme Court of the United States, as that Court has held upon these same questions; because, as we have seen, this is a doctrine which is creeping westward like the course of Empire, and California, so far,

in the enlightenment of her doctrines, has not fallen behind the other States.

In section 240 this learned author says that "a review of the authorities leads us to the conclusion that the doctrine which denies to the littoral owner, as such, a valuable property right, including the privilege of free access from his land to the water, is contrary alike to authority, sound reason, justice, and the settled principles of constitutional law." That it is contrary to authority as such authority is modern. It is contrary to reason in view of the necessities surrounding such questions, and that it is contrary to justice is made manifest without illustration or elaboration. And the author speaks with regret that the Courts of Oregon and Washington could have committed themselves to the support of a doctrine so false and untenable, and observes that unless their decisions should be speedily overruled, they will crystallize into an inflexible rule of property, to the discredit of their jurisprudence and the perpetuation of injustice.

Section 252 speaks of the doctrine of accretion as being vindicated on the principle of natural justice; that he who sustains the burden of losses and of repairs, imposed by the contiguity of waters, ought to receive whatever benefits they may bring by accretion; that some say it is derived from the principle of public policy, that it is the interest of the community that all land should have an owner, and most convenient that insensible additions to the shore should follow the title to the shore itself. But that whatever may be the reason for the doctrine, it held that the same rule applies whether the accretion is attributable purely to natural causes or to the wrongful deposit by human agency of soil in the ocean or other public waters in front of the upland.

We think it is fair to assume in this connection that the right of the littoral owner in and to the submerged lands surrounding his own is paramount, except as against the *jus publicum;* that when a State assumes to grant this public right to a private individual, then it assumes to subvert it; and assuming the shape of a private right, it is immediately arrayed against another private right, pre-existing, first in law and first in justice.

I apprehend that if the State had desired at the time to give a franchise in these lands to an individual, and that franchise was in the interest of the public, and that public interest was ascertained to be paramount to any private interest in these rocks, that the right and title in the rocks themselves could have been extinguished in a Court at law, "by due process and just compensation." Then there would have been a legal ascertainment of a public interest in the matter which would have forever remained *res judicata.* Under these pretensions appellant might have been able to extend the area of his land, in so far only as it was compatible with that same public interest involved in this kind of title and made manifest by its purpose.

THE NEW ENGLAND DOCTRINE.

As it is claimed that California has the same rights of sovereignty as the original States, it is well to call attention to that sovereignty of the original States as it has been construed by their Courts.

In the case of Providence Steam Engine Co. vs. Providence etc. Steamship Co., 34 American Reports, 657, the New England doctrine is considerably discussed. We commend it to the careful perusal of the Court; however,

we cannot desist from calling the attention of the Court to some particular phrases.

On page 657, in speaking of the English doctrine, it is observed that "the king of England held the shores only as trustee for the public. That he had undertaken to grant away portions of the shore as private property, and to exclude the general public from their rights in it, was one of the grievances complained of and attempted to be redressed by Magna Charta."

So it appears by this, that one of the grievances rectified by the great Charta was that the king sought to vest in the individual what pertained to the public, as the State has done in the case at bar.

The Court further observes, on page 657, that "It has been very common to speak of the right of the State in the shores as a fee. This is proper only by analogy. To hold that the State owns the shores in fee in the same sense in which it owns a courthouse or a prison, or in which the United States own public lands, or a citizen may own land in fee, would lead to consequences which need only to be considered in order to show that such can never have been the nature of the right."

Citing Angell on Tide Waters, 24.

The Court further observes that "during the revolutionary war, and the distressful times which followed it, if the State had owned the fee of this valuable property it could not have escaped a sale. Town treasurers were committed to jail for the nonpayment of nearly every State tax that was ordered, and yet no town nor person ever thought of this as a property which the State owned in fee, or could sell to lessen taxation."

It appears that this has reference to the time when the States were themselves sovereign as nations, yet acting under the same limitations which did hedge the

king in England. It was held that the States, even in times of stress, were not able to part with the fee in the tide lands.

And the Court further observes that "to hold that the State holds the fee of the shore in such a sense that it can sell the shores would deprive nearly half of the land in this small State [referring to the State of Rhode Island] of a large portion of its value derived from bounding on the shore."

And it is held on page 658, that "the monstrous injustice that would result if such a doctrine were established as law is enough to show that it ought not be recognized as law."

Numerous authorities are quoted on the same page.

In commenting on page 659, the Court says: "The language of many of the decisions can be reconciled by holding that while the State does not own the shore in fee, properly speaking, and therefore cannot sell the shore to be held as private property, and so cut off the riparian owner from the water, it has the complete regulation and control of it for public purposes."

On page 660, the Court cites from Cooley's Constitutional Limitations, 544, note 1, wherein the learned author says: "So far as these cases hold it competent to cut off a riparian proprietor from access to the navigable water, they seem to us to justify an appropriation of his property without compensation; for even those Courts which hold the fee in the soil under navigable waters to be in the State admit valuable riparian rights in the adjacent proprietor."

It must follow from this doctrine that if the rights of the riparian owner cannot be taken without compensation and through due process of law, that they cannot otherwise be appropriated; and when they are not so ap-

propriated they remain intact, and remaining intact, all of the benefits by accretions, whether natural or artificial, must inure to them. Upon this theory only can the doctrines enunciated have force and effect. To attempt to acquire title in direct violation of the law does not actually acquire it; and that which is done unlawfully in such attempt must inure to the benefit of the titles which remain unimpaired.

It is observed on page 661 that, "in Massachusetts, and Sullivan says in New Plymouth, the ordinance of 1640 extended the riparian rights of the flats. The principles of this ordinance were adopted in New Hampshire, though the ordinance never extended thither. Sullivan on Land Titles in Massachusetts, 284."

Continuing the Court says: "But it is probable that this ordinance only recognized and validated an existing usage. Sullivan on Land Titles, 285, says: 'From the first settlement of the colony of Massachusetts, that Government practiced upon the principles of this provision.' And Angell on Tide Waters, 225, says, that although the ordinance was afterward annulled, the usage continued, and now has the force of common law, quoting the words of the Supreme Judicial Court in Storer vs. Freeman, 6 Mass. 434, 438."

Also citing Angell on Tide Waters, 234, i. e., Commonwealth vs. Charlestown, 1 Pick. 180; 11 Am. Dec. 161; Commonwealth vs. Pierce, 2 Dane Abridg. 696.

In page 663 the Court says: "The right to wharf out or reclaim is a valuable right even before its exercise. It constitutes a part of the value and sometimes nearly the whole value of the upland."

It must be conceded that if the right lies in the riparian owner, that whatever is done must inure to the benefit of that right.

The Court quotes from the language of Mr. Justice Taney in Martin vs. Wadell, 16 Pet. 367, 414, which says:

"The men who first formed the English settlements could not have been expected to encounter the many hardships that unavoidably attended their emigration to the new world, and to people the banks of its bays and rivers, if the land under the water at their very doors was liable to immediate appropriation by another as private property, and the settler upon the fast land thereby excluded from its enjoyment and unable to take a shellfish from its bottom, or fasten there a stake or even bathe in its waters, without becoming a trespasser upon the rights of another."

Is it not plainly seen that this doctrine is a sacred part of the rights of owners recognized in that section of our country where individual rights were first declared? Is it not a part of the old New England system—a system which received its first impulse of Anglo-Saxon law from those rights which after many years of suffering and oppression were finally declared in the great charta?

The Court, on page 663, says: "And he holds every one of these rights by as sacred a tenure as he holds the lands from which they emenate. The State cannot either directly or indirectly, divest him of any of these rights, except by a constitutional exercise of the power to appropriate private property for public purposes."

It does not seem in the case at bar that the State has recognized a constitutional authority by due process of law and after just compensation, but that it has done that which this language says it cannot do "either directly or indirectly"; to wit, deprived the United States of one of its constitutional rights.

On page 664 the learned Judge speaks of the doctrine of Wisconsin, and adduces therefrom this language:

"They approve and follow their former decision, holding that the riparian owner on a navigable river has rights therein differing in kind and degree from the rights of the public. He has the right of access to and from his land, and to all the facilities which the location of the land gives him, and this, although the water's edge is the boundary of his title."

On page 665, the Court quotes from Lorman vs. Benson, 8 Mich. 18, showing that the Michigan doctrine held that the riparian owner is entitled to every right consistent with the public easement. And also from Rice vs. Ruddiman, 10 Mich. 125, and also Barron vs. Mayor & City Council of Baltimore, 2 Am. Jur., 203, showing the Maryland doctrine that "it was held that the owner had the right of access to his land by water, and that this was property."

On page 666, in Baltimore & O. R. R. Co. vs. Chase, 43 Md. 23, it was held that the riparian owner on navigable water had the right of access from the front of his lot to erect wharves, etc., subject to regulation by the legislature, and that these rights are property; and that while they must be enjoyed in subjection to the rights of the public, the owner cannot be deprived of them.

And referring to the doctrine in the State of Connecticut, the Court says: "It was laid down by Judge Swift that while the sea and navigable waters are common for certain purposes, the owners of the bank have a right to the soil covered with water as far as they can occupy, that is, to the channel. It was subsequently explained that this does not mean that the riparian owners are seised, but only that they have a right to occupy, and that it properly termed a franchise. The usage to wharf out is recognized as an immemorial usage, which makes a common law. It exclusively belongs to the riparian

owner, and no one has any right to do anything to his injury in front of his land."

Citing 1 Swift's System, c. 22, p. 341;
East Haven vs. Hemingway, 7 Conn. 186;
Chapman vs. Kimball, 9 Id. 38;
Nichols vs. Lewis, 15 Id. 137;
Simons vs. French, 25 Id. 346, 352.

The Court further says: "The right to wharf out has also been generally recognized in the other States." And refers to

Clement vs. Burns, 43 N. H. 609, 617;
Northwestern Union Packet Co. vs. Atlee, 2 Dill. 479, 485.

Further, on page 667, the Court says: "In Massachusetts, under their Colony Ordinance of 1640, which, as I have before said, was probably only designed to recognize and limit an existing usage, the riparian owner had a qualified right to low-water mark, provided it was not more than one hundred rods, and a man might sell these flats separately."

Citing many cases.

And this seems to be the New England doctrine which embraces the particular kind of sovereignty claimed by subsequent States in and to their tide and submerged lands.

Since we have invoked the sovereignty of the original States, and have claimed that we are entitled to its just measure by reason of being admitted upon an equal footing with them, let us at least do every deference to the

spirit which we would summon now and be guided and controlled by it.

We will conclude a discussion of this doctrine with the observation that the tide and submerged lands included in a Mexican grant were finally excluded therefrom by confirmation of our Courts, for the reason that the public owned them.

If it had been deemed that the title in these lands vested in the State as a proprietor only, the Courts probably would have confirmed them to the grantees under the Mexican Government, because, as between individual rights, these would have been superior. But the question was decided in favor of the State, because the State represented a *sovereign right;* that is, the sovereignty of the people. This it cannot give away. Its title is an incident of sovereignty; it cannot give away an incident of sovereignty. This incident is "made the darling of its precious eye; to lose 't or give 't away were such perdition as nothing else could match."

PARAMOUNT SOVEREIGNTY OF THE GENERAL GOVERNMENT.

Let us proceed now upon the theory that the Government, on the 9th of September, 1850, owned the rocks; that the appellant, Mission Rock Company, never claimed title from the general Government, and that the only title it had was from the State of California, whose ownership rested upon the principle that it was an incident of sovereignty. This presents to us a question which has agitated the councils of the nation for more than one hundred years; one fought out on battle fields, and at last decided, as we think, by the Courts, in favor of that contention on the part of the Federal Government which must insure to it a paramount sovereignty

where it has a sovereignty at all; exclusive, carrying with it everything that might be necessary and pertinent to its supremacy.

If the Government of the United States owns these islands, it has by reason of its sovereignty, certain exclusive rights. Upon these rights the State cannot encroach. The State cannot destroy them; the State cannot destroy any particular element of them when the destruction of that element reaches at the fundamental right itself.

An application of this principle: If the State itself, or its grantee claiming title to the submerged lands around the rock could fill the same up with accretions, adding to the area of the rocks four acres instead of 14-100 and 1-100 of an acre then we will see that the sovereignty of the State encroaches upon the sovereignty of the nation until the latter is wholly destroyed and unable to exercise its necessary and ordinary functions.

Let us examine the question as to whether a State can do this. We know that if a State can do it in one instance it can do it in many. There must be a certainty in doctrines of this kind, and we submit that this certainty has been arrived at through the process of the discussions of more than one hundred years. There must be a certainty—a dividing line between the sovereignty of the United States and the sovereignty of the State. The former cannot usurp; the latter cannot encroach.

The Mexican Republic attempted to pattern after our own institutions, and in many particulars adopted our model of Government. For a long time it led to violence, because an intermixture of sovereignty was tolerated; there was the gradual encroachment of the one upon the other; there was no settlement as to which was

paramount. In the case of the United States it is different. There is one rule and but one rule. It is this: Whatever sovereignty is given to the United States, though limited, is paramount and exclusive. Every other power is reserved to the States themselves. The right of holding property acquired by treaty is just as much a right of the general Government as though it was one of those legislative sanctions enumerated in article 1, section 8, of the Constitution. The right of holding territory is an inferred right. It is incident to the exercise of the powers of Government—incident to the right of making treaties, of declaring war and concluding peace, and its sovereignty exists just as thoroughly and completely as it does in any other instance. It has as much right to own land as it has to own a gun. Can the State encroach upon it? If it can, it can destroy it. It would be tedious to discuss all of the decisions which point out clearly the fact that whatever is delegated to the general Government and pertains to its sovereignty is of necessity exclusive. These are few and limited, but within the sphere of each it is absolute. The limitation upon such sovereignty is in relation to things, and not in relation to the extent of its operation when relating to things over which it is sovereign.

De Tocqueville, in his "Democracy in America," in speaking of the jurisdiction of the Courts of the United States, says: "The Union as it was established in 1798 possesses, it is true, a limited supremacy; but it was intended that within its limits it should form one and the same people. Within those limits the Union is sovereign. When this point is established and admitted the inference is easy; for it is acknowledged that the United States constitute one and the same people within the bounds prescribed by their Constitution. It is impos-

sible to refuse them the rights which belong to other nations."

Again, in speaking of the Union, he says: "In relation to the same matters it constitutes a people and that in relation to all the rest it is a nonentity."

This seems to state the doctrine that what is reserved to the States creates an exclusive State sovereignty, but with reference to what the States have relinquished, the general Government has an absolute sovereignty as a nation.

Addressing these principles to the question in issue, can it possibly be held that by surrounding this island as they have, it becomes the right of the sovereign State to encroach upon and destroy all of those elements of sovereignty residing in the general Government.

The same learned author says further:

"But the inference to be drawn is, that in the laws relating to these matters the Union possesses all of the rights of absolute sovereignty."

I apprehend that this refers to the laws of the United States, one of which reserves in the United States its title to its lands; that is, those lands which are not confirmed to individuals, and those which do not pass to the State by reason of its sovereignty.

Further: "We have shown that the principal aim of the legislators of 1789 was to divide the sovereign authority into two parts. In one they placed the control of the several interests of its component States. Their chief solicitude was to arm the Federal Government with sufficient power to enable it to resist within its sphere the encroachments of the several States."

Permit the suggestion, that when the general Government of the United States seeks to protect its right of title to its lands, it is acting "within its sphere," and it

has the right to invoke its Courts to protect itself from "the encroachments of the several States." How can there, in the very nature of our Government, be a divided authority or a divided sovereignty, as it refers to a particular thing? It is confessed that there cannot be, in general. Does not the same rule apply with reference to titles? What is the difference whether the Government of the United States seeks to defend its own title, or whether its citizen seeks to invoke the laws in defending a title given him by patent? Is the latter more secure than the former? Does it embody any other or greater principle?

In his celebrated reply to Hayne, Daniel Webster, in speaking of the necessity of preserving the relations between the States, and of acknowledging the dividing line between their authority, said:

"The States are unquestionably sovereign, so far as their sovereignty is not affected by this supreme law."

In speaking of a supreme law, he was referring to a paramount sovereignty which resided in the Federal Government.

Further: "The State legislatures as political bodies, however sovereign, are yet not sovereign over the people."

"So far as the people have given power to the general Government, so far the grant is unquestionably good, and the Government holds of the people and not of the State Governments."

So far as the people have restrained State sovereignty by the expression of their will in the Constitution of the United States, so far it must be admitted State sovereignty is effectually controlled." In other words, so far as it is effectually controlled, it does not exist; and while the State of California had a sovereignty in its

tide lands, it did not exist in the face of that sovereignty necessarily residing in the general Government with reference to its title to these rocks. The State could not, by reason of its sovereignty in its submerged lands, destroy the submerged lands and still retain sovereignty which existed only by reason of the element which it removed, and the destruction of which renders impossible the ordinary exercise of the sovereign right of the general Government in and to its own exclusive property.

Mr. Chief Justice Marshall, in McCulloch vs. The State of Maryland, 4 Wheat. 316, said:

"The Government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily, from its nature. It is the Government of all; it represents all; its powers are delegated by all and acts for all. The nation, on these subjects on which it can act, must necessarily bind its component parts. The Government of the United States, then, though limited in its power, is supreme, and its laws when made in pursuance of the Constitution form the supreme law of the land, anything in the Constitution or laws of any State notwithstanding."

Mr. Chief Justice Taney in the Dred Scott case, says:

"The principle upon which our Governments rest, and upon which alone they continue to exist, is the union of States, sovereign and independent, within their own limits, in their internal and domestic concerns, and bound together as one people by a general Government possessing certain restricted and enumerated powers delegated to it by the people of the several States, exercising supreme authority within the scope of the powers granted to it throughout the dominion of the United States."

Once admitting that the Government of the United States owned the rocks, that in its ownership it had the

right to exercise the ordinary functions of a sovereign, that the states have no right to encroach upon the sovereignty of the nation when it is conforming to the "sphere of its action," then the encroachment of the State, or any grantee acting under it, is an encroachment upon a paramount sovereignty operating within the sphere of a necessary and legitimate function.

On the 9th day of September, 1850, Congress passed an act admitting California into the Union. (9th U. S. Stats. at Large, p. 452.)

One of the conditions of this act is, that the people of the State, "through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law, and do no act, whereby the title of the United States to, and right to dispose of the same, shall be impaired or questioned."

Can it possibly be stated that to recognize the claims of appellant would not be a destruction, or, at least, an "impairment," of the rights of the United States in the public domain as it is reserved by this act? As a practical question, has not the State in this instance sought to impair the right of the United States to dispose of its title in and to Mission Rock? To answer this question in the negative, and to say that the right of such disposal is not impaired, is to confess that title is still in the United States, and all of the incidents of title which have been builded around the rock by the State itself, and which would otherwise destroy the title of the United States, is but an evidence of an intention to add to the public domain, rather than to take away from it.

While the powers of the Federal Government are delegated, yet when once given they are paramount and ex-

clusive. To invade one of the incidents is to invade the power itself.

Judge Cooley, in section XV of his "Principles of Constitutional Law," in relation to the powers of Congress, speaking of the general clause in the Constitution which empowers the Congress "to make all laws which shall be necessary and proper for the carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof," says:

"The import of the clause is, that Congress shall have all of the incidental and instrumental powers necessary and proper to carry into execution all the express powers. It neither enlarges any power specifically given, nor is it a grant of any new power of Congress, but is merely a declaration for the removal of all uncertainty, that the means for carrying into execution those otherwise granted are included in the grant. The grant of the principal must include the necessary and proper incidents without which the grant would be ineffectual. It would be as undesirable as it would be impracticable to enumerate all the means by the use of which the powers expressly conferred shall be exercised, since what may be suitable and proper means at one period may be wholly unsuitable and ineffectual at another period, under conditions which had not been anticipated, and thus the iron rule of limitation to means specified would defeat the grant itself. The clause above recited distinctly negatives any suggestion that so unwise and impracticable a restriction was intended. Those who made the Constitution conferred upon the Government of their creation sovereign powers; they prescribed for it a sphere of action, limited, indeed, as respects subjects and purposes, but within which it should move with supreme

authority, untrammeled except by the restraints which were expressly imposed or which were implied in the continued existence of the States and of free institutions. But there cannot be such a thing as a sovereign without a choice of the means by which to exercise sovereign powers."

"In any particular in which the powers of the United States are contemplated, the necessity for the exercise of incidental powers is apparent. Congress, as a means to the collection of its revenues, provides for the seizure, sale, or confiscation of property; in its regulation of commerce, builds lighthouses and removes obstructions from harbors; in establishing postoffices, prescribes the rate of postage, provides for the appointment of postmasters and other agents, for the free delivery of postal matter, and for the sale and payment of postal money orders, etc. But whatever may be the power it exercises in these and other cases it must provide against its being rendered nugatory, and its purpose thwarted, by enacting laws for the punishment of those who commit acts which tend to obstruct, defeat or impair the force of their due execution, or who neglects duties essential to the accomplishment of the ends designed. Without these and similar incidental powers the Government would be as completely without the means of perpetuating its existence as was the Constitution itself."

It is a natural inference from all of these authorities quoted that in order for the Government to maintain its sovereignty, we must conclude that such sovereignty is a necessity where it does exist; that where it does exist, the full measure of it will be found to be necessary, and that where it is necessary, all incidents thereto must be implied.

The question might be asked, Why do we invoke this recognized principle in the settlement of a conflicting claim to territory between the United States and the State? This may be answered by the question, Why does it not pertain to matters of this kind? If the State has sovereignty in its tide lands, does not that in itself raise the question of sovereignty between them? Where the question of sovereignty is raised between the two, and apparently necessary for the exercise of the rights of both, does it not follow that it must be solved in favor of the Federal Government?

As an illustration of the serious damage which could result from the contention of appellant, we might instance Alcatraz Island, situated in the bay of San Francisco, overlooking the Golden Gate, and upon which giant fortifications have been constructed for the protection of the harbor. Looking beyond the time when these fortifications were erected, we can see it in our mind's eye, a barren rock, larger, it is true, yet of the same character and quality of soil, as the ones in dispute. Suppose the State of California claiming title by reason of its sovereignty, had given it by grant to some individual, including therein fourteen acres of submerged lands contiguous to and surrounding it; suppose the grantee had filled in these submerged lands, thereby extending the area of Alcatraz into a larger and more important island at the very entrance of the harbor; under these circumstances could the law have so operated, and could the right of the grantee of the State been so extended as to encroach upon, absorb, and finally destroy that paramount sovereignty of the Government; by which it is enabled now to maintain the very works constructed thereon? Is this "the round and top of sovereignty"? If so, there is nothing serious in Government; "all is but

toys, renown and grace is dead; the wine of life is drawn and the mere lees is left this vault to brag of." What is the answer to this? On page 42 of their brief, learned counsel say: "That the United States engineers, with the approval of the War Department, have drawn the line beyond which the plaintiff in error shall not use its own land"; that its ownership "beyond this line could avail it nothing." So it seems to be confessed at last that its rights and its title are subservient to the paramount sovereignty of the general Government. That its quality of title depends upon the sanction of the general Government. Then we come to the inquiry, Can the War Department confer title or change the nature of a title conferred by the State? Should the War Department by a permissive act allow plaintiff in error to fill in around Alcatraz, could such permission be construed into conferring title? Does appellant here confess that it had not the right under its own title from the State to do this filling, and that it had to secure the right from the Government? Then we are to infer that this right was not an incident to its own title. If this is so, what becomes of its labors under the license from the Government? If a new quality of title is made under this license it would appear that this title would inure to the benefit of the one granting the license. If the right to fill in was vested by license of the Government and not as an incident of original title, then how can it be made the basis of a new title in plaintiff in error? There can be no permissive act of the War Deparment which can be construed as forfeiting the vested rights of the sovereign, and if a permission was granted which resulted in the filling in of contiguous land to a Government island, such permission must be construed into a license presumed to result in a benefit to, rather than as a depriva-

tion of, the Government and its vested rights. It is fatal to say that the quality of appellant's title depends upon the act of the War Department, for it must be assumed that the sovereign would permit the encroachment only upon the presumption that it would inure to its own benefit. There is no treatise on law or upon government from the time that the scholars under Justinian compiled the Roman laws, to Blackstone, and from Blackstone till now, which will permit the sovereignty of a nation to be encroached upon and destroyed under a pretense of an agent giving a license to perform an act against the interests and to the destruction of the vested rights of the Government.

In conclusion, we desire to urge that it has been the policy of all Governments to guard with jealous care their property in islands. In the hands of enemies or neutrals they become elements of menace; but when protected, they become protectors in turn and afford positions of strength.

The Mexican Government granted some of its islands, upon the theory only that the grantees would be more able than the Government to keep them from falling into the hands of the adventurers on the sea. The United States Government, equally jealous, seeks to protect them herself and no powerful grantee can give strength to its cause nor justice to its right.

FRANK L. COOMBS,
United States Attorney.

MARSHALL B. WOODWORTH,
Assistant United States Attorney,
Attorneys for Appellee.

No. 684

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE WILDER'S STEAMSHIP COMPANY (an Hawaiian Corporation), and The Steamship "CLAUDINE," Her Tackle, etc.,
Appellants,

vs.

J. S. LOW and JOHN PILTZ,
Appellees.

VOL. I.

(Pages 1 to 400, inclusive.)

Appeal from the District Court of the United States for the Territory of Hawaii.

FILMER-ROLLINS CO. PRINT, 424 SANSOME ST., S. F.

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In the District Court of the United States, in and for the Territory of Hawaii.

IN ADMIRALTY.

J. S. LOW,
Libelant and Appellee,
vs.
The Steamship "CLAUDINE" and the WILDER'S STEAMSHIP CO. (a Corporation),
Libelees and Appellants.
} Libel.

Caption to Libel of J. S. Low.

Be it known that the above-entitled suit was commenced on the 27th day of September, A. D. 1900, by J. S. Low, as libelant, and the steamship "Claudine" and the Wilder's Steamship Company, a corporation, as libelees.

That the libel in said suit was filed on the 27th day of September A. D. 1900, on which day a monition was issued out of the District Court, under which the said steamship "Claudine" was attached by the United States marshal, and notice of said attachment served on the proctors for the libelees.

That thereafter, on the 29th day of September, A. D. 1900, an appearance and claim was filed in said court by the said Wilder's Steamship Company, and on said day a

stipulation for value was entered into and filed, releasing said steamship from said attachment.

That thereafter, on the 1st day of October, A. D. 1900, a peremptory exception was filed by the libelees, the hearing on said exception having taken place on the eleventh day of said October.

That on the 9th day of October, A. D. 1900, a stipulation to read and use in this court certain evidence and exhibits given and produced in the trial of the case of George U. Hind et al. vs. The Steamship "Claudine" and the Wilder's Steamship Company, in the Circuit Court of the First Judicial Circuit for the Republic of Hawaii, was filed.

That thereafter, on the 12th day of said October, a stipulation was filed to take the evidence of John Piltz and David Robinson on behalf of the libelant.

That thereafter, on the 15th day of said October, the answer of the said libelees was filed herein.

That thereafter, on the 30th day of November, A. D. 1900, a further stipulation as to the use of evidence and exhibits used in the aforesaid case of George U. Hind et al. vs. The Steamship "Claudine" and the Wilder's Steamship Company was filed herein.

That thereafter, on the 6th day of December, 1900, a motion for continuance based on the affidavit of E. B. McClanahan was filed on behalf of the libelees.

That thereafter on the 11th day of December, A. D. 1900, a stipulation as to the ownership of certain coal, constituting the cargo of the William Carson, was filed herein.

That thereafter, on the 20th day of said December, the decision of the Honorable Morris M. Estee was filed herein.

That thereafter, on the 26th day of said December, the final judgment and decree of this Court was filed herein.

That thereafter, on the 28th day of said December, a notice of appeal to the Circuit Court of Appeals for the Ninth Circuit was filed in said court, and service made on the proctors for the libelant herein.

That thereafter, on the 31st day of December, A. D. 1900, a bond on appeal was filed herein together with a bond to stay execution, in the sum of $15,000.00, as fixed by the order of the Judge of said court and on said day notice was given to the proctor for the libelant of such filing, and of the names and residences of the sureties.

That thereafter, on the 14th day of January, A. D. 1901, an assignment of errors was filed in said court, and notice of said assignment given to the proctor for the libelant.

That the trial of said suit was commenced before the Honorable Morris M. Estee, Judge of the United States District Court, for the Territory of Hawaii, on the 29th day of November, A. D. 1900 which trial closed on the seventh day of December, A. D. 1900.

That there was no question referred to a commissioner or commissioners; that there was no interlocutory decree, and that the date of the entry of the final decree was the 26th day of December, A. D. 1900, and that the

date of the filing of the notice of appeal was the 28th day of December, A. D. 1900.

KINNEY, BALLOU & McCLANAHAN,
Proctors for Libelee-Appellant.

In the District Court of the United States, in and for the Territory of Hawaii.

IN ADMIRALTY.

JOHN PILTZ,
Libelant and Appellee,
vs.
The Steamship "CLAUDINE" and the WILDER'S STEAMSHIP CO. (a Corporation),
Libelees and Appellants.
} Libel.

Caption to Libel of John Piltz.

Be it known that the above-entitled suit was commenced on the 27th day of September, A. D. 1900, by John Piltz, as libelant and the steamship "Claudine" and the Wilder's Steamship Company a corporation, as libelees.

That the libel in said suit was filed on the 27th day of September, A. D. 1900, on which day a monition was issued out of the District Court, under which the said steamship "Claudine" was attached by the United States marshal, and notice of said attachment served on the proctors for the libelees.

That thereafter, on the 29th day of September, A. D.

1900, an appearance and claim was filed in said court by the said Wilder's Steamship Company, and on said day a stipulation for value was entered into and filed, releasing said steamship from said attachment.

That thereafter, on the 1st day of October, A. D. 1900, a peremptory exception was filed by the libelees, the hearing on said exception having taken place on the eleventh day of said October.

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That thereafter, on the 6th day of December, 1900, a motion for continuance, based on the affidavit of E. B. McClanahan, was filed on behalf of the libelees.

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constituting the cargo of the William Carson, was filed herein.

That thereafter, on the 20th day of said December, the decision of the Honorable Morris M. Estee was filed herein.

That thereafter, on the 26th day of said December, the final judgment and decree of this Court was filed herein.

That thereafter, on the 28th day of December, a notice of appeal to the Circuit Court of Appeals for the Ninth Circuit was filed in said court, and service made on the proctors for the libelant herein.

That thereafter, on the 31st day of December, A. D. 1900, a bond on appeal was filed herein, together with a bond to stay execution, in the sum of $2,000.00, as fixed by the order of the Judge of said court, and on said day notice was given to the proctor for the libelant of such filing, and of the names and residences of the sureties.

That thereafter, on the 14th day of January, A. D. 1901, an assignment of errors was filed in said court, and notice of said assignment given to the proctor for the libelant.

That the trial of said suit was commenced before the Honorable Morris M. Estee, Judge of the United States District Court, for the Territory of Hawaii, on the 29th day of November, A. D. 1900, which trial closed on the seventh day of December, A. D. 1900.

That there was no question referred to a commissioner or commissioners; that there was no interlocutory de-

cree, and that the date of the entry of the final decree was the 26th day of December, A. D. 1900, and that the date of the filing of the notice of appeal was the 28th day of December, A. D. 1900.

KINNEY, BALLOU & McCLANAHAN,
Proctors for Libelee-Appellant.

In the District Court of the United States of America, for the Territory of Hawaii.

IN ADMIRALTY.

J. S. LOW
vs.
The Steamship "CLAUDINE" and the WILDER'S STEAMSHIP COMPANY (a Corporation)

Libel of J. S. Low.

J. S. Low, the libelant above named, exhibits this, his libel, against the steamer "Claudine," her engines, machinery, boats, tackle, apparel, and furniture, and the Wilder Steamship Company, a corporation, the reputed owner of said steamer within the admiralty and maritime jurisdiction of this Court, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime.

And thereupon the said libelant does allege and articulately propound as follows, to wit:

I.

That the barkentine "William Carson" was an American vessel of about seven hundred and ninety-one tons burthern, and at the time when the cause of action arose, which is hereafter set forth, was employed in a voyage between the ports of Newcastle and Honolulu and owned by Geo. U. Hind and others, her master then being one John Piltz, one of the owners thereof.

II.

That on the 27th day of December, 1899, the said vessel, being tight, stanch, well manned and provided, while on the aforesaid voyage and sailing within about twelve miles from Honolulu harbor, at about 8:40 o'clock P. M. of said day, her course lying southwest, and sailing free at a speed of between two and three knots an hour, was approached by the said steamship "Claudine," apparently heading south by east and bearing to the vessel's starboard beam.

That subsequently, after a nearer approach, the said steamer showed her starboard light, and then, suddenly shifting her helm and blowing her signal whistle once, collided with the said "William Carson," striking her on the starboard bow forward of the cathead; and that thereupon the "William Carson," through a leak caused by said collision, began to fill, and was, after filling, thrown upon her starboard beam end, in which situation she remained ever since the collision, until she sank and became, with her freight, a total loss.

III.

That the steamship which caused said damage was the steamer "Claudine," whereof one Weissbarth was master at the time of said collision, and whereof the libelee, Wilder's Steamship Company, a body corporate, incorporated under the laws of the Hawaiian Islands was and is the owner.

IV.

That before and during the time when said collision took place the said "William Carson" carried the lights prescribed by law, which lights at the time of said collision were brightly burning and could have been seen by the said "Claudine" if she kept a proper lookout for as much as two miles, and in sufficient time for said steamer to avoid the collision aforesaid.

V.

That at the time of and before the said collision the said "William Carson" had a proper watch on deck, and that before the collision the said "Claudine," after suddenly shifting her helm, never slackened her speed nor signaled to stop or reverse her engines, although she was coming at a speed of about ten miles per hour.

VI.

That when the danger of a collision between the said steamship and vessel became apparent to the crew of the "William Carson" it was impossible for her to get out of the way, and the said vessel could not have resorted to any maneuver by which she could have avoided the collision.

VII.

That at the time when said collision occurred, and prior thereto, there was sufficient light to see the hull of the said vessel, and to see the same in sufficient time for the steamer to avoid said collision; and that if said steamship had continued on her course instead of shifting her helm at the time when she blew her whistle, and instead of attempting to cross the bow of the vessel, probably no serious damage would have ensued to either craft.

VIII.

That at the time of said collision, the said barkentine "William Carson" was laden and carrying as freight a cargo of coal, to wit, one thousand three hundred and thirty-eight (1,338) tons, of a value of about $8,000.00, owned by James and Alexander Brown of Newcastle, N. S. W. That said cargo of coal was insured in the Western Assurance Company of Toronto, Canada, in the sum of three thousand and fifty ($3,050.00) dollars. That after the loss of said "William Carson" and the said cargo, and before the commencement of this action, the said James and Alexander Brown, in consideration of the payment of the sum of $3,050.00, assigned, transferred, and conveyed absolutely to the said Western Assurance Company their right, title, and interest in and to the said coal, and that the said Western Assurance Company thereafter, to wit, on the 28th day of August, A. D. 1900, sold, assigned, and transferred their interest in the said coal, and all claims for the loss thereof, to

this libelant, and that he now is the owner thereof; that at the time of said collision there was due and owing as freight earned for carrying the said cargo the sum of six thousand ($6,000.00) dollars to the firm of Hind, Rolf & Company, under a certain charter-party between said Hind, Rolf & Co. and the before mentioned James and Alexander Brown; that said freight was insured by the Firemen's Fund & Insurance Co, against loss, and that after the loss of the said barkentine the said Hind, Rolf & Co., and before the commencement of this action, assigned, transferred, and conveyed absolutely, to said Firemen's Fund & Insurance Company, in consideration of the payment of the sum of six thousand ($6,000.00) dollars, their right, title and interest in and to the said freight and all claims arising from its loss from said collision.

That thereafter, to wit, on the 28th day of August, A. D. 1900, the said Firemen's Fund & Insurance Co. sold, assigned, and transferred their interest in the said freight and all claims for the loss thereon to this libelant, and that he now is the owner thereof.

That the value of the freight and cargo at the time of said collision was exceeding the sum of nine thousand and fifty ($9,050) dollars, and that by reason of careless, negligent, unskillful, and improper management of the said steamship "Claudine" and of the consequent collision thereby brought about between the said steamship and the said "William Carson" the libelant has been greatly damaged, that is to say, damaged in the sum of nine thousand and fifty ($9,050.00) dollars or thereabouts,

which said sum the libelant prays to recover from the libelees herein, with all lawful costs and disbursements therewith incurred by libelant.

IX.

That the value of the said steamship "Claudine" is, and at the time of said collision was, the sum of one hundred and twenty-five thousand ($125,000.00) dollars.

X.

That all and singular the premises are true.

Wherefore, your libelant prays that process in due form of law may issue against the said steamship "Claudine," her engines, machinery, boats, tackle, apparel and furniture, and against the said Wilder's Steamship Company, and that this Honorable Court will pronounce for the damages aforesaid and decree the same to be paid with costs, and for such other and further relief as to right and justice may appertain and the Court is competent to give in the premises.

J. S. LOW.

PAUL NEUMANN,
Proctor for Libelant.

Territory of Hawaii, }
Island of Oahu. } ss.

J. S. Low, being duly sworn, on his oath, deposes and says that he is the libelant in the foregoing action; that he has read the foregoing libel and knows the contents thereof and that the same is true.

J. S. LOW.

Subscribed and sworn to before me this 27 day of September, A. D. 1900.

[Seal] WALTER B. MALING,
Clerk.

Let process issue as prayed for, returnable on the regular return day of this Court, to wit, Monday, the 8th day of October, 1900, at 10 o'clock A. M.

September 27, 1900.

MORRIS M. ESTEE,
United States District Judge, District and Territory of Hawaii.

[Endorsed]: Filed September 27, 1900. W. B. Maling, Clerk.

Monition.

In the District Court of the United States, for the Territory of Hawaii.

The President of the United States of America, to the [L. S.] Marshal of the United States of America for the Territory of Hawaii, Greeting:

Whereas, a libel hath been filed in the District Court of the United States for the Territory of Hawaii, on the 27th day of September, A. D. 1900, by J. S. Low, vs. The Steamship "Claudine" and the Wilder Steamship Company, a corporation, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said vessel, her

tackle, etc., may be cited in general and special to answer the premises, and all proceedings being had that the said vessel, her tackle, etc., may for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libelants:

You are, therefore, hereby commanded to attach the said vessel, her tackle, etc., and to retain the same in your custody until the further order of the Court respecting the same and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said Court, to be held in and for the Territory of Hawaii, on the 8th day of October, A. D. 1900, at ten o'clock in the forenoon of the same day, if that day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and to make their allegations on that behalf.

And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness, the Hon. MORRIS M. ESTEE, Judge of said Court, at the city of Honolulu, in the Territory of Hawaii, this 27 day of September, A. D. 1900 and of our independence, the one hundred and twenty-fifth.

(Sign.) WALTER B. MALING,
Clerk.

By ————————,
Deputy Clerk.

P. NEUMANN,
Proctor for Libelant.

MARSHAL'S RETURN.

In obedience to the within monition, I attached the S. S. "Claudine" therein described, on the 27th day of September, 1900, and have given due notice to all persons claiming the same that this Court will, on the 8th day of October, 1900 (if that day be a day of jurisdiction; if not, on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same, by posting a notice of this monition according to law, for the space of days, in the , Territory of Hawaii, and by causing the notice of seizure, information, and arrest of the property and time of hearing to be published in publications or issues of (a newspaper published in this district, and in which the said publication was made by order of this Court), prior to the time and place fixed for the hearing.

Honolulu, Sep. 27, 1900.

D. A. RAY,
United States Marshal.
By E. R. Hendry,
Chief Office Deputy.

[Endorsed]: September 27, 1900. W. B. Maling, Clerk.

In the District Court of the United States of America, for the Territory of Hawaii.

IN ADMIRALTY.

JOHN PILTZ,
Libelant,
vs.
The Steamship "CLAUDINE" and the WILDER STEAMSHIP COMPANY (a Corporation),
Libelees.

Libel of John Piltz.

John Piltz, the libelant above named, exhibits this, his libel, against the steamer "Claudine," her engines, boats, machinery, tackle, apparel and furniture; and the Wilder Steamship Company, a corporation, the reputed owner of said steamer, within the admiralty and maritime jurisdiction of this Court, and against all persons lawfully intervening for their interest therein, in a cause of collision civil and maritime.

And thereupon the said libelant does allege and articulately propound as follows, to wit:

I.

That the barkentine "William Carson" was an American vessel of about seven hundred and ninety-one tons burthen, and at the time when the cause of action arose, which is hereinafter set forth, was employed in a voyage

between the ports of Newcastle and Honolulu and owned by Geo. U. Hind and others, her master then being one John Piltz, one of the owners thereof.

II.

That on the 27th day of December, 1899, the said vessel, being tight, stanch, well manned, and provided, while on the aforesaid voyage and sailing within about twelve miles from Honolulu harbor at about 8:40 o'clock P. M. of said day, her course lying southwest, and sailing free at a speed of between two and three knots per hour, was approached by the said steamship "Claudine," apparently heading south by east and bearing to the vessel's starboard beam.

That subsequently, after a nearer approach, the said steamer showed her starboard light, and then, suddenly shifting her helm and blowing her signal whistle once, collided with the said "William Carson," striking her on the starboard bow forward of the cathead, and that thereupon the "William Carson," through a leak caused by said collision, began to fill, and was, after filling, thrown upon her starboard beam end, in which situation she remained ever since the collision until she sank and became with her freight, a total loss.

III.

That the steamship which caused said damage was the steamer "Claudine," whereof one Weissbarth was master at the time of said collision, and whereof the libelee, Wilder Steamship Company, a body corporate,

incorporated under the laws of the Hawaiian Islands, was and is the owner.

IV.

That before and during the time when said collision took place the said "William Carson" carried the lights prescribed by law, which lights, at the time of said collision, were brightly burning and could have been seen by the said "Claudine," if she kept a proper lookout, for as much as two miles, and in sufficient time for said steamer to avoid the collision aforesaid.

V.

That at the time of and before the said collision the said "William Carson" had a proper watch on deck, and that before the collision the said "Claudine," after suddenly shifting her helm, never slackened her speed nor signaled to stop or reverse her engines, although she was coming at a speed of about ten miles per hour.

VI.

That when the danger of a collision between the said steamship and vessel became apparent to the crew of the "William Carson" it was impossible for her to get out of the way, and the said vessel could not have resorted to any maneuver by which she could have avoided the said collision.

VII.

That at the time when said collision occurred, and prior thereto, there was sufficient light to see the hull of the said vessel, and to see the same in sufficient time

for the steamer to avoid said collision; and that if the said steamship had continued on her course, instead of shifting her helm at the time when she blew her whistle, and instead of attempting to cross the bow of the vessel, probably no serious damage would have ensued to either craft.

VIII.

That at the time of said collision the libelant was possessed of and had on board of the said barkentine "William Carson" certain personal effects particularly set forth in the list attached hereto, marked Exhibit "A" and made part hereof; and that the value of said personal effects at said time was two thousand four hundred and seventy-four dollars and thirty cents ($2,474.30).

That by reason of said collision the aforesaid effects were totally lost, and no part thereof could be or has been saved; that libelant was the true and lawful owner of said effects, and has been damaged through the acts of the libelees in said sum of two thousand four hundred and seventy-four dollars and thirty cents ($2,474.30).

That the value of the said personal effects at the time of said collision was exceeding the sum of two thousand four hundred and seventy-four dollars and thirty cents, and that by reason of careless, negligent, unskillful, and improper management of the said steamship "Claudine," and of the consequent collision thereby brought about between the said steamship and the said "William Carson," and the loss of his said personal effects, the libelant has been greatly damaged, that is to say, damaged in the sum of two thousand four hundred and seventy-four

dollars and thirty cents, or thereabout, which said sum the libelant prays to recover from the libelees herein, with all lawful costs and disbursements therewith incurred by libelant.

IX.

That the value of said steamship "Claudine" is, and at the time of said collision was, the sum of one hundred and twenty-five thousand ($125,000.00) dollars.

X.

That all and singular the premises are true.

Wherefore, your libelant prays that process in due form of law may issue against the said steamship "Claudine," her engines, machinery, boats, tackle, apparel and furniture, and against the said Wilder Steamship Company, and that this Honorable Court will pronounce for the damages aforesaid and decree the same to be paid with costs, and for such other and further relief as to right and justice may appertain and the Court is competent to give in the premises.

JOHN PILTZ.

PAUL NEUMANN,
Proctor for Libelant.

Territory of Hawaii,
Island of Oahu. } ss.

John Piltz, being duly sworn, on his oath, deposes and says that he is the libelant in the foregoing action and late master of the barkentine "Wiliam Carson"; that he has read the foregoing libel and knows the contents thereof, and that the same is true.

JOHN PILTZ.

Subscribed and sworn to before me this 27th day of September, A. D. 1900.

[Seal] WALTER B. MALING,
Clerk.

Exhibit "A" (To Libel of John Piltz).

1		Black Dress Suit	$ 62 00
1		" " "	45 00
1		Blue Overcoat	45 00
1		Gray Overcoat	25 00
1		Navy Blue Suit	28 00
6		White Shirts—at $1.50	9 00
6		Colored Shirts—at $1.25	7 50
4		Woolen Shirts—at $2.50	10 00
4	Sets	Red Flannel Underwear—at $5.00	20 00
3	Sets	Cashmere Underwear—at $5.00	15 00
1	Doz.	Pr. Woolen Socks—at 50 cts	6 00
2		Flannel Suits—at $10.00	20 00
2		Linen Suits—at $6.00	12 00
2		Dress Hats—at $5.00	10 00
1		Silk Umbrella	5 00
2	Pair	Shoes	11 50
1	Pair	Slippers	2 50
1		Mackintosh	10 00
2		Diamond Studs	100 00
2	Pair	Gold Cuff Buttons	25 00
1		Gold Collar Button	5 00
1	Doz.	Collars	2 00
1	Doz.	Pair Cuffs	4 00
1		Smoking Jacket	10 00

1	Pair	Ship's Leather Boots.....	24 00
1	Pair	Rubber Boots and Coat.....	10 00
1		Slop Chest... 385	00
1		Sea Coat.....	25 00
1		Pistol..	12 00
1		Camphor-wood Chest...	15 00
1		Iron Bound Trunk..... ...	6 50
1		Bicycle....	50 00
2		Sextants....	75 00
		Charts and Books..... 300	00
1		Tell-tale Compass	15 00
2		Red Flannel Shirts..... ...	7 50
2	Doz.	Handkerchiefs....	6 00
		Sundries..	25 00
1		Twelve-foot Master Mariner's Flag..	12 00
		Cash.... 150	00
			$1,572.50

(EXHIBIT "A" Cont.)

		Forward..... ....$1,572.50	
1		Pair Gold Eye Glasses.....$10	00
1		Navy Blue Outing Suit.....	35 00
1		Black Brocaded Silk Suit.....	40 00
1		Piece Black Silk.....	38 00
1		Black Crepe Dress.....	30 00
1		Plain Black Skirt.....	10 00
1		Fur Boa....	15 00
1		Fur Cape...	45 00
2		Black Satin Waists at $10.00..	20 00

1	Black Jacket	15 00
1	Piece of Serge	12 00
2	Pongee Silk Wrappers at $10.00	20 00
4	Calico Wrappers—at $2.50	10 00
3	Shirt Waists	10 00
1	Dozen Chemise—at $1.25	15 00
1	Dozen Pair Drawers—at 90 cts.	10 80
24	Pair Stockings—at 50 cts	12 00
2	Pair Shoes—at $5.00 and $3.00	8 50
1	Hat	10 00
6	Nightdresses—$1.75	10 50
	Corsets	10 00
3	White Undervests—at $3.50	10 50
	Corset Covers and Dressing Jacket	8 00
2	Silk Undervests	15 00
4	Colored Undervests	6 00
1	Gold Bracelet	25 00
1	Watch Chain	25 00
2	Mackintoshes	23 00
2	Silk Umbrellas—at $5.00	10 00
2	Dozen Handkerchiefs	10 00
2	Blankets—at $8.00 and $10.00	18 00
1	Crocheted Bedspread and Shams	45 00
4	Feather Pillows—at $2.50	10 00
1	Down Quilt	15 00
1	Feather Bed	35 00
1	Dozen Napkins—at 25 cts. each	3 00

1	Dozen Napkins—at 50 cts. each	6 00
2	Sofa Pillows—at $3.50..	7 00
1	Pair Slippers.....	2 50
4	Sets Flannel Underclothes—at $3.00	12 00
1	Opera Glass....	15 00
1	Dozen Bed Sheets—at $1.00 each.....	12 00
1	Dozen Pillow Cases—at 50 cts. each....	6 00
1	Singer Sewing Machine..	65 00
2	Brooches.... 100	00
	Sundries..	25 00
		$ 901.80
	Total	$2,474.30

Let process be issued as prayed for, returnable on the regular return day of this Court, to wit, Monday, the 8th day of October, 1900, at ten o'clock A. M.

September 27, 1900.

MORRIS M. ESTEE,

Judge.

[Endorsed]: Filed September 27, 1900. W. B. Maling, Clerk.

Monition.

In the District Court of the United States, for the Territory of Hawaii.

The President of the United States of America, to the Marshal of the United States of America for the
[L. S.] Territory of Hawaii, Greeting:

Whereas, a libel hath been filed in the District Court of the United States for the Territory of Hawaii, on the 27th day of September, A. D. 1900, by John Piltz, libelant, vs. The Steamship "Claudine" and the Wilder Steamship Company, a corporation, libelees, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said vessel, her tackle, etc., may be cited in general and special to answer the premises, and all proceedings being had that the said vessel, her tackle, etc., may for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libelants:

You are, therefore, hereby commanded to attach the said vessel, her tackle, etc., and to retain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said Court to be held in and for

the Territory of Hawaii, on the 8th day of October, A. D. 1900, at ten o'clock in the forenoon of the same day, if that day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations on that behalf.

And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness, the Hon. MORRIS M. ESTEE, Judge of said Court, at the city of Honolulu, in the Territory of Hawaii, this 27th day of September, A. D. 1900, and of our independence the one hundred and twenty-fifth.

(Sgn.) WALTER B. MALING,
Clerk.

By ,
Deputy Clerk.

PAUL NEUMANN,
Proctor for Libelant.

MARSHAL'S RETURN.

In obedience to the within monition, I attached the S. S. "Claudine" therein described, on the 27th day of September, 1900, and have given due notice to all persons claiming the same that this Court will, on the 8th day of October, 1900 (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same, by posting a notice of this monition according to law, for the space of

days, in the , Territory of Hawaii, and by causing the notice of seizure, information, and arrest of the property and time of hearing to be published in publications or issues of (a newspaper published in this district, and in which the said publication was made by order of this Court), prior to the time and place fixed for the hearing.

Honolulu, Sept. 27th, 1900.

D. A. RAY,
United States Marshal.
By E. R. Hendry,
Chief Office Deputy.

[Endorsed]: Filed September 27, 1900. W. B. Maling, Clerk.

In the District Court of the United States, in and for the Territory of Hawaii.

IN ADMIRALTY.

J. S. LOW,
Libelant,
vs.
Steamship "CLAUDINE" and WILDER'S STEAMSHIP CO. (a Corporation),
Respondents.
} Libel.

Appearance and Claim on Behalf of Owner.

And now Wilder's Steamship Company, a corporation, intervening for its interest as owner of the said steam-

ship "Claudine," her engines, machinery, boats, tackle, apparel, and furniture, appears before this Honorable Court, and makes claim to said steamship, her engines, machinery, boats, tackle, apparel, and furniture, as the same are attached by the marshal under process of this Court at the instance of J. S. Low.

And the said Wilder's Steamship Company avers that it was in possession of said steamship at the time of the attachment thereof, and that it is the true and bona fide owner of said steamship, and that no other person is the owner thereof.

Wherefore it prays to be admitted to defend accordingly.

WILDER'S STEAMSHIP COMPANY.
By its Secretary,
S. B. ROSE.

Subscribed and sworn to in open Court this 29th day of September, A. D. 1900.

[Seal] WALTER B. MALING,
Clerk.

[Endorsed]: Filed September 29, 1900. W. B. Maling, Clerk.

In the District Court of the United States of America, for the Territory of Hawaii.

IN ADMIRALTY.

J. S. LOW,
Libelant,
vs.
Steamship "CLAUDINE" and WILDER'S STEAMSHIP CO. (a Corporation),
Respondents.
} Libel.

Stipulation and Agreement.

It is hereby stipulated and agreed between the proctors for the respective parties hereto that the stipulation for value releasing the said "Claudine" from the attachment of the marshal heretofore made herein shall be in the sum of eleven thousand ($11,000) dollars.

PAUL NEUMANN,
Proctor for Libelant.
KINNEY, BALLOU & McCLANAHAN,
E. B. M.,
Proctors for Respondents.

[Endorsed]: Filed September 29, 1900. W. B. Maling, Clerk.

No. 8.

In the District Court of the United States, for the Territory of Hawaii.

IN ADMIRALTY.

Stipulation.

Entered into in pursuance to the rules of practice of this Court.

Whereas, a libel was filed on the 27th day of September, in the year of our Lord nineteen hundred, by J. S. Low against S. S. "Claudine" and Wilder's Steamship Company, for the reasons and causes in the said libel mentioned;

And whereas, the said steamer, her engines, boilers, machinery, apparel, and furniture in the custody of the United States marshal, under the process issued in pursuance of the prayer of said libel, and where the said steamship has been claimed by Wilder's Steamship Company; and whereas, it has been agreed that said steamship may be released from arrest upon the giving and filing of an admiralty stipulation in the sum of eleven thousand (11,000) dollars, as appears from said agreement now on file in said court; and the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the claimant or their sureties, execution for the above amount may issue against their goods, chattels and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulators, undersigned, shall at any

time, upon the interlocutory or final order or decree of the said District Court, or of any Appellate Court to which the above-named suit may proceed, and upon notice of such order or decree to Kinney, Ballou & McClanahan, Esqs., proctor for the claimant of said steamship "Claudine," abide by and pay the money awarded by the final decree rendered by the Court or the Appellate Court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

[W. S. S. Co. Seal] WILDER'S STEAMSHIP CO.,
By its Secretary and Vice-President,
S. B. ROSE,
Sec.
J. F. HACKFELD, Vice-President,
W. C. WILDER.
WM. G. BRASH.

Taken and acknowledged this 29th day of September, 1900, before me.

[Seal] WALTER B. MALING,
Clerk of the United States District Court of the Territory of Hawaii.

Territory of Hawaii—ss.

W. C. Wilder and Wm. G. Brash, parties to the above stipulation, being duly sworn, depose and say, each for himself, that he is a resident freeholder in said territory; that he is worth the sum of $11,000 over and above all his just debts and liabilities, and that his property is situate in said territory and subject to execution.

W. C. WILDER.
WM. G. BRASH.

Sworn to this 29th day September, 1900, before me.

[Seal] WALTER B. MALING,

Clerk United States District Court, Territory of Hawaii.

Filed the September 29, 1900. W. B. Maling, Clerk.

By Deputy Clerk.

In the District Court of the United States, in and for the Territory of Hawaii.

IN ADMIRALTY.

JOHN PILTZ,
Libelant,
vs.
Steamship "CLAUDINE" and WILDER'S STEAMSHIP CO. (a Corporation),
Respondents.
} Libel.

Appearance and Claim on Behalf of Owner.

And now Wilder's Steamship Company, a corporation, intervening for its interest as owner of the said steamship "Claudine," her engines, machinery, boats, tackle, apparel and furniture, appears before this Court and makes claim to said steamship, her engines, machinery, boats, tackle, apparel, and furniture, as the same are attached by the marshal under process of this Court at the instance of John Piltz.

And the Wilder's Steamship Company avers that it was in possession of said steamship at the time of the

attachment thereof, and that it is the true and bona fide owner of said steamship and that no other person is the owner thereof.

Wherefore it prays to be admitted to defend accordingly.

WILDER'S STEAMSHIP COMPANY.
By its Secretary,
S. B. ROSE.

Subscribed and sworn to this 29th day of September, A. D. 1900.

[Seal] WALTER B. MALING,
Clerk.

[Endorsed]: Filed September 29, 1900. W. B. Maling, Clerk.

In the District Court of the United States of America, for the Territory of Hawaii.

IN ADMIRALTY.

JOHN PILTZ, Libelant,
vs.
The Steamship "CLAUDINE" and The WILDER'S STEAMSHIP CO. (a Corporation), Respondents. } Libel.

Stipulation and Agreement.

It is hereby stipulated and agreed between the proctors for the respective parties hereto that the stipula-

tion for value releasing the said "Claudine" from the attachment of the marshal, heretofore made herein, shall be in the sum of four thousand ($4,000) dollars.

PAUL NEUMANN,
Proctor for Libelant.

KINNEY, BALLOU & McCLANAHAN,
E. B. M.,
Proctors for Respondents.

[Endorsed]: Filed September 29, 1900. W. B. Maling, Clerk.

No. 9.

District Court of the United States for the Territory of Hawaii.

IN ADMIRALTY.

Stipulation.

Entered into in pursuance to the rules of practice of this Court:

Whereas, a libel was filed on the 27th day of September, in the year of our Lord, nineteen hundred, by John Piltz, against the steamship "Claudine" and the Wilder's Steamship Company, for the reasons and causes in the said libel mentioned; and whereas, the said steamship,

her boilers, engines, machinery, apparel, and furniture under the custody of the United States marshal under the process issued in pursuance of the prayer of said libel; and whereas, the said steamship has been claimed by the Wilder's Steamship Company; and whereas, it has been agreed that said steamship may be released from arrest upon the giving and filing of an admiralty stipulation in the sum of four thousand (4,000) dollars, as appears from said agreement now on file in said court, and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the

or their sureties, execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulators, undersigned, shall at any time upon the interlocutory or final order or decree of the said District Court, or any Appellate Court to which the above-named suit may proceed, and upon notice of such order or decree to Kinney, Ballou & McClanahan, Esqs., proctors for the claimant,the said Wilder's Steamship Company, abide by and pay the money awarded by the final decree rendered by the Court or the Appellate

Court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

[Seal W. S. S. Co.]

WILDER'S STEAMSHIP COMPANY.

By Its Vice-President and Secretary,

J. F. HACKFELD, V.-President,

S. R. ROSE, Sec.

W. C. WILDER.

WM. G. BRASH.

Taken and acknowledged this 29th day of September, 1900, before me.

[Seal] WALTER B. MALING,

Clerk of the United States District Court, Territory of Hawaii.

Territory of Hawaii—ss.

W. C. Wilder and Wm. G. Brash, parties to the above stipulation, being duly sworn, depose and say, each for himself, that he is a resident freeholder in said territory; that he is worth the sum of four thousand dollars over and above all his just debts and liabilities, and that his property is situate in said territory and subject to execution.

W. C. WILDER.

WM. G. BRASH.

Sworn to this 29th day of September, 1900, before me.

[Seal] WALTER B. MALING,

Clerk of the United States District Court, Territory of Hawaii.

Filed September 29, 1900. W. B. Maling, Clerk. By , Deputy Clerk.

In the District Court of the United States, in and for the Territory of Hawaii.

J. S. LOW,
Libelant,
vs.
Steamship "CLAUDINE" and the WILDER'S STEAMSHIP COMPANY (a Corporation),
Libelees.
} Libel.

Peremptory Exceptions.

The Wilder's Steamship Company, claimant and respondent, excepts to the libel of the aforesaid libelant on the ground that the statement contained in paragraph four of said libel—"That the said 'William Carson' carried the lights prescribed by law, which lights at the time of said collision were brightly burning and could have been seen by the said 'Claudine,' if she kept a proper lookout, for as much as a half mile and in sufficient time for said steamer to avoid the collision aforesaid," is insufficient as a matter of law. And on the further ground that the said libel does not contain any allegation that the said "William Carson" carried a green light on her starboard side of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light

from right ahead to two points abaft the beam on the starboard side; and on the further ground that said libel does not contain any allegation that the said "William Carson" carried a red light on her port side of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the port side.

Wherefore, respondent and the claimant submits that it is not bound to answer said libel, and prays that the same may be dismissed with costs.

WILDER'S STEAMSHIP COMPANY.

By S. B. ROSE,

Its Secretary.

KINNEY, BALLOU & McCLANAHAN,

Proctors for Claimant and Respondents.

[Endorsed]: Filed October 1, 1900. W. B. Maling, Clerk.

In the District Court of the United States, in and for the Territory of Hawaii.

JOHN PILTZ,
Libelant,
vs.
Steamship "CLAUDINE" and the WILDER'S STEAMSHIP COMPANY (a Corporation),
Libelees.
} Libel.

Peremptory Exceptions.

The Wilder's Steamship Company, claimant and respondent, excepts to the libel of the aforesaid libelant on the ground that the statement contained in paragraph four of said libel—"That the said 'William Carson' carried the lights prescribed by law, which lights at the time of said collision were brightly burning and could have been seen by the said 'Claudine,' if she kept a proper lookout, for as much as a half mile and in sufficient time for said steamer to avoid the collision aforesaid," is insufficient as a matter of law. And on the further ground that the said libel does not contain any allegation that the said "William Carson" carried a green light on her starboard side of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft

the beam on the starboard side; and on the further ground that said libel does not contain any allegation that the said "William Carson" carried a red light on her port side of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the port side.

Wherefore, respondent and the claimant submits that it is not bound to answer said libel, and prays that the same may be dismissed with costs.

WILDER'S STEAMSHIP COMPANY.
By S. B. ROSE,
Secretary.
KINNEY, BALLOU & McCLANAHAN,
Proctors for Claimant and Respondents.

[Endorsed]: October 1, 1900. W. B. Maling, Clerk.

Thursday, October 11, 1900.

Hon. M. M. ESTEE, District Judge Presiding.

The following minute was entered:

J. S. LOW
vs.
S. S. "CLAUDINE" et al. } No. 8.

Order Combining Causes.

By consent of counsel for both parties, it is ordered that the case of John Piltz vs. S. S. "Claudine" et al.,

No. 9, be combined with the case of J. S. Low vs. S. S. "Claudine" et al. for trial.

J. S. LOW
vs.
S. S. "CLAUDINE" et al. } No. 8.

JOHN PILTZ
vs.
S. S. "CLAUDINE" et al. } No. 9.

Order Amending Peremptory Exceptions, etc.

Counsel argued on peremptory exceptions which were submitted to the Court, whereupon, by consent of counsel for respective parties, the clerk of this Court is ordered to strike out the words "A half mile," and to insert the words "Two miles," in paragraph four of the libel in each of the above cases.

And it was further ordered that libelees have until Saturday next, October 13, 1900, to file answers to the libels in the cases.

In the District Court of the United States, for the Territory of Hawaii.

IN ADMIRALTY.

J. S. LOW,
Libelant,
vs.
The Steamship "CLAUDINE" and WILDER'S STEAMSHIP CO. (a Corporation),
Libelees.
} Libel.

Answer.

In the answer of Wilder's Steamship Company, claimant and respondent, to the libel of the above-named libelant, said respondent alleges and propounds as follows:

I.

That in answer to paragraph I of the said libel claimant and respondent admits the allegations contained therein.

II.

That in answer to paragraph II respondent and claimant admits that on the 27th day of December, A. D. 1899, about 8:40 P. M. of said day, while on a voyage between the ports of Newcastle and Honolulu, the barkentine "William Carson," sailing free, was approached by the steamship "Claudine"; that subsequently after nearer approach said steamship "Claudine" showed her star-

board light, and that thereafter said steamship "Claudine" collided with the said barkentine "William Carson," and that the said "William Carson" was struck by the said steamship "Claudine" on the starboard bow, and that thereafter the said "William Carson," through a leak caused by the said collision, began to fill. But the respondent denies each and every remaining allegation in said paragraph contained.

III.

In answer to paragraph III respondent admits that one Weisbarth was the master of said steamship "Claudine" at the time of said collision, and that the respondent and claimant, Wilder's Steamship Company, a body corporate, incorporated under the laws of the Hawaiian Islands, was and is the owner of said steamship. But respondent denies that the damage to said barkentine, through said collision, was caused through the fault of said steamship "Claudine," or through the fault of its captain, officers, crew, or owners.

IV.

That in answer to paragraph IV respondent denies each and every allegation therein contained.

V.

In answer to paragraph V respondent says, that having no knowledge from which to form a belief, it neither admits nor denies that at the time of and before said collision the said "William Carson" had a proper watch on deck, and leaves the said libelant to his proof of the same.

In answer to the remaining portion of said paragraph V respondent denies the allegations therein contained.

VI.

That in answer to paragraph VI respondent denies each and every allegation therein contained.

VII.

In answer to paragraph VII respondent denies each and every allegation therein contained.

VIII.

In answer to paragraph VIII, respondent having no knowledge or information sufficient to form a belief, neither admits nor denies that at the time of the said collision the "William Carson" was carrying as freight a cargo of coal, to wit, 1,338 tons; or that it was owned by James and Alexander Brown, of Newcastle, N. S. W., nor that it was insured in the Western Assurance Company of Toronto, Canada, in the sum of $3,050; or that after the loss of the "William Carson" and the said cargo, and before the commencement of this action, the said James and Alexander Brown conveyed absolutely to the said company their right, title, and interest in and to the said coal, or that thereafter the said Western Assurance Company transferred their interest in said coal and all claims for the loss thereof to this libelant; or that at the time of said collision there was due and owing as freight earned for carrying said cargo the sum of $6,000 to the firm of Hind, Rolph & Co., under a certain charter-party between Hind, Rolph & Co. and the said James and Alexander Brown; or that the said freight was insured

by The Firemen's Fund, an insurance company, against loss; or that after the loss of said barkentine and before this action said Hind, Rolph & Co. conveyed to the said Firemen's Fund Insurance Co., in consideration of the payment of the sum of $6,000, their right, title, and interest in and to the said freight and all their claims arising from its loss by said collision; or that thereafter the said Firemen's Fund Ins. Co. transferred their interest in said freight, and all claims for the loss thereof, to this libelant, or that he is now the owner thereof; but leaves the libelant to his proof of each and every one of the aforementioned allegations. In answer to the remaining allegations of said paragraph VIII this respondent denies each and every allegation therein contained.

IX.

In answer to paragraph IX respondent admits the allegation therein contained.

And as a separate answer and defense to said libel this respondent avers that it is informed and believes, and upon such information and belief alleges the truth to be, that on the said 27th day of December, A. D. 1899, at about the hour of 8:40 P. M. of said day, said steamer "Claudine," while on a voyage from the port of Honolulu, to the port of Lahaina and other ports, on the island of Maui, and when about ten miles from the port of Honolulu, tight, staunch, well manned and provided, the second mate of the said "Claudine" being at that time stationed on the bridge of said steamer as lookout, descried a bright light on the steamer's port bow. That

a few minutes after this light was first seen the said second mate left the bridge for the purpose of informing the captain of the said "Claudine" of the light, which he took to be the light of the Molokai Lighthouse, or else a masthead light of a steamer. That the said second mate did not find the captain in his cabin, and was told that he had temporarily gone below; that he then returned from the bridge from which he had been absent for about two minutes, and found that the light was nearer than when first seen, but was still a bright light with nothing else visible. That the said second mate then believed that the said light was the masthead light of a steamer, and ordered the man at the wheel to port his helm, and at the same time blew the steamer's whistle one blast, as the lawful signal that he would pass to the right of the approaching steamer. That immediately after the whistle was blown the captain of the steamer came upon the bridge, closely followed by the mate. That the second mate pointed out the bright light to the captain and that suddenly thereafter a green light became visible, and the order was given to starboard the steamer's helm. That immediately after this order was given the sails and hull of the said barkentine loomed up, and it was seen that the green light was fixed high up in the rigging of the fourth mast of said barkentine, and it was then too late to avoid the collision by a change of course, by a stoppage of the steamer's engines, or by any other means.

That the course of the said steamer "Claudine," at the time a bright light was first seen, was east three-fourths

south, magnetic, and her speed was that which she generally made under similar conditions.

That the night was unusually dark and obscure, but the atmosphere was free from fog; and that a proper lookout was kept on said steamer at and before said collision, and that said lookout was a competent man and in good condition.

That the only thing of said barkentine seen and visible prior to a time when a collision could not be avoided was the bright light heretofore referred to, and that the sails and hull or the green light of said barkentine were not visible from the said steamship "Claudine" until a time when the collision was unavoidable.

That the collision occurred wholly through the fault of the said barkentine "William Carson," for that her starboard light was improperly placed and not visible from the steamer "Claudine" until such a time as it was impossible by any maneuver to avoid a collision.

That the maneuvers on the part of the said steamer were lawful and proper under the circumstances, for that said steamer was wholly deceived by the lights of said barkentine, and that such deception was caused wholly by the wrongful and illegal acts of the said "William Carson," its officers and crew.

That the only light on board of the said barkentine visible from the said "Claudine" as aforesaid up to the time when the collision could not be avoided was a bright light which, because of the night, was fairly and reasonably supposed to be the masthead light of a steamer a long distance off, or else the cabin light of a vessel mak-

ing her course away from the said "Claudine," and it was because such light was supposed to be the masthead light of a steamer that the "Claudine's" whistle was blown and her helm ported.

That the position of the two was such, prior to the showing of the green light as aforesaid, as to make it impossible for said green light to have been seen from said steamer "Claudine," because said green light, if burning at all, was so fixed as to be invisible with the barkentine sailing free, as alleged in libelant's libel and admitted in this answer.

That the said green light was so fixed as that under no circumstances could it throw a light from right ahead to two points abaft the beam on the starboard side, nor was the said green light of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, nor was said green light visible at all from the steamer "Claudine" until such a time when it was impossible by any maneuver on the part of the said "Claudine" to have avoided said collision.

That the said "Claudine" acted upon, and had a right to act and rely upon, the lawful and proper construction, placing, and maintenance of proper and lawful lights on board of said barkentine "William Carson," and if said lights had been lawfully constructed, placed, and maintained on said barkentine, said collision would not have occurred.

That the said "Claudine" on said night, prior to and at the time of said collision, had all her proper and lawful lights properly constructed, placed, and burning ac-

cording to law, and had a proper and competent lookout, and did and performed every act and thing requisite, proper, and necessary under the circumstances, and this respondent claims that neither it nor its servants or agents on board of said steamer "Claudine" at said time in any manner contributed to said collision, but that said collision occurred solely through the fault of said barkentine "William Carson," its officers, servants or agents.

Wherefore, this respondent prays that this Honorable Court will pronounce against the demands of the libelant in his libel before mentioned, with costs.

WILDER'S STEAMSHIP COMPANY.
By Its Secretary and Treasurer,
(Signed) S. B. ROSE.

Honolulu, Oahu,
Territory of Hawaii. } ss.

On this 13th day of October, A. D. 1900, before me personally appeared S. B. Rose, secretary and treasurer of Wilder's Steamship Company, a corporation, respondent herein, who made oath that he had read the foregoing answer subscribed to by him on behalf of the said corporation, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

S. B. ROSE.

Subscribed and sworn to before me this 13th day of October, A. D. 1900.

[Seal] ELEANOR W. DAVIES,
Notary Public.

[Endorsed]: Filed October 15, 1900. W. B. Maling, Clerk.

In the District Court of the United States, for the Territory of Hawaii.

IN ADMIRALTY.

JOHN PILTZ,
Libelant,
vs.
The Steamship "CLAUDINE" and WILDER'S STEAMSHIP CO. (a Corporation),
Libelees.
} Libel.

Answer.

The answer of Wilder's Steamship Company, claimant and respondent, to the libel of the above-named libelant, said respondent alleges and propounds as follows:

I.

That in answer to paragraph I of the said libel claimant and respondent admits the allegations contained therein.

II.

That in answer to paragraph II respondent and claimant admits that on the 27th day of December, 1899, about

8:40 P. M. of said day, while on a voyage between the ports of Newcastle and Honolulu, the barkentine "William Carson," sailing free, was approached by the steamship "Claudine"; that subsequently after nearer approach, said steamship "Claudine" showed her starboard light, and that thereafter said steamship "Claudine" collided with the said barkentine "William Carson," and that the said "William Carson" was struck by the said steamship "Claudine" on the starboard bow, and that thereafter the said "William Carson," through a leak caused by the said collision, began to fill. But respondent denies each and every remaining allegation in said paragraph contained.

III.

In answer to paragraph III respondent admits that one Weisbarth was the master of said steamship "Claudine" at the time of said collision, and that the respondent and claimant, Wilder's Steamship Co., a body corporate, incorporated under the laws of the Hawaiian Islands, was and is the owner of said steamship. But respondent denies that the damage to said barkentine through said collision was caused through the fault of said steamship "Claudine," or through the fault of its captain, officers, crew, or owners.

IV.

That in answer to paragraph IV respondent denies each and every allegation therein contained.

V.

In answer to paragraph V respondent says, that having no knowledge from which to form a belief it neither admits nor denies that at the time of and before said collision the said "William Carson" had her proper watch on deck, and leaves the libelant to his proof of the same. In answer to the remaining portion of said paragraph V respondent denies the allegations therein contained.

VI.

That in answer to paragraph VI this respondent denies each and every allegation therein contained.

VII.

In answer to paragraph VII respondent denies each and every allegation therein contained.

VIII.

In answer to paragraph VIII respondent, having no knowledge or information sufficient to form a belief, neither admits nor denies the allegation that the libelant was possessed of and had on board the said barkentine "William Carson" certain personal effects, but leaves the said libelant to his proof of the same. In answer to the remaining allegations of paragraph VIII the respondent denies each and every allegation therein contained.

IX.

In answer to paragraph IX respondent admits the allegation therein contained.

And as a separate answer and defense to said libel this respondent avers: That it is informed and believes, and upon such information and belief alleges the truth to be, that on the said 27th day of December, A. D. 1899, at about the hour of 8:40 P. M. of said day said steamer "Claudine," while on a voyage from the port of Honolulu to the port of Lahaina and other ports on the island of Maui, and when about ten miles from the said port of Honolulu, tight, stanch, well manned and provided, the second mate of the said "Claudine" being at that time stationed on the bridge of said steamer as lookout, descried a bright light on the steamer's port bow. That a few minutes after this light was first seen the said second mate left the bridge for the purpose of informing the captain of the said "Claudine" of the light, which took to be the light of the Molokai Lighthouse, or else a masthead light of a steamer. That the said second mate did not find the captain in his cabin and was told that he had temporarily gone below; that he then returned from the bridge, from which he had been absent for about two minutes, and found that the light was nearer than when first seen, but was still a bright light with nothing else visible; that the said second mate then believed that the said light was the masthead light of a steamer, and ordered the man at the wheel to port his helm, and at the same time blew the steamer's whistle one blast as the lawful signal that he would pass to the right of the approaching steamer. That immediately after the whistle was blown the captain of the steamer came upon the bridge, closely followed by the mate.

That the second mate pointed out the bright light to the captain, and that suddenly thereafter a green light became visible and the order was given to starboard the steamer's helm. And immediately after this order was given the sails and hull of the said barkentine loomed up and it was seen that the green light was fixed high up on the rigging of the fourth mast of said barkentine, and it was then too late to avoid the collision by a change of course, by a stoppage of the steamer's engines, or by any other means.

That the course of the said steamer "Claudine" at the time a bright light was first seen was E. $\frac{3}{4}$ S., magnetic, and her speed was that which she generally made under similar conditions.

That the night was unusually dark and obscure, but the atmosphere was free from fog; and that a proper lookout was kept on said steamer at and before said collision, and that said lookout was a competent man and in good condition.

That the only thing of the said barkentine seen and visible prior to a time when the collision could not be avoided was the bright light heretofore referred to; that the sails and hull or the green light of said barkentine were not visible from the said steamship "Claudine" until a time when the collision was unavoidable.

That the collision occurred wholly through the fault of the said barkentine "William Carson," for that her starboard light was improperly placed and not visible from the steamer "Claudine" until such a time as it was impossible by any maneuver to avoid a collision.

That the maneuvers on the part of said steamer were lawful and proper under the circumstances, for that said steamer was wholly deceived by the lights of said barkentine, and that such deception was caused wholly by the wrongful and illegal acts of the said "William Carson," its officers or crew.

That the only light on board of the said barkentine visible from the said "Claudine," as aforesaid, up to the time when the collision could not be avoided was a bright light which, because of the night, was fairly and reasonably supposed to be the masthead light of a steamer a long distance off, or else the cabin light of a vessel making her course away from said "Claudine," and it was because such light was supposed to be the masthead light of a steamer that the "Claudine's" whistle was blown and her helm ported.

That the position of the two was such, prior to the showing of the green light as aforesaid, as to make it impossible for said green light to have been seen from said steamer "Claudine," because said green light, if burning at all, was so fixed as to be invisible with the barkentine sailing free, as alleged in libelant's libel and admitted in this answer.

That the said green light was so fixed as that under no circumstances could it throw a light from right ahead to two points abaft the beam on the starboard side, nor was the said green light of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, nor was said green light visible at all from the steamer "Claudine" until such a

time when it was impossible by any maneuver on the part of said "Claudine" to have avoided said collision.

That the said "Claudine" acted upon, and had a right to act and rely upon, the lawful and proper construction, placing, and maintenance of proper and lawful lights on board of said barkentine "William Carson," and if said lights had been lawfully constructed, placed, and maintained on said barkentine said collision would not have occurred.

That the said "Claudine" on said night prior to and at the time of said collision had all of her proper and lawful lights properly constructed, placed, and burning according to law, and had a proper and competent look-out, and did and performed every act and thing requisite, proper, and necessary under the circumstances, and this respondent claims that neither it, nor its servants, nor agents on board the said steamer "Claudine," at said time in any manner contributed to said collision, but that said collision occurred solely through the fault of the said barkentine "William Carson," its officers, servants, or agents.

Wherefore, this respondent prays that this Honorable Court will pronounce against the demands of the libelant in his libel before mentioned, with costs.

WILDER'S STEAMSHIP CO.
By Its Secretary and Treasurer.
S. B. ROSE.

Honolulu, Oahu,
Territory of Hawaii. } ss.

On this 13th day of October, A. D. 1900, before me personally appeared S. B. Rose, secretary and treasurer of Wilder's Steamship Company, a corporation, respondent herein, and made oath that he had read the foregoing answer subscribed to by him on behalf of the said corporation, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those he believes it to be true

S. B. ROSE.

Subscribed and sworn to before me this 13th day of October, A. D. 1900.

[Seal] ELEANOR W. DAVIES,
Notary Public.

[Endorsed]: Filed October 15, 1900. W. B. Maling, Clerk.

In the District Court of the United States of America, for the Territory of Hawaii.

IN ADMIRALTY.

J. S. LOW,
Libelant,

vs.

The Steamship "CLAUDINE" and WILDER'S STEAMSHIP CO. (a Corporation),
Respondents.

Libel.

Stipulation as to Evidence and Exhibits.

It is hereby stipulated and agreed between the proctors for the respective parties in the above-entitled cause that when said cause shall come to hearing, the evidence, together with the exhibits, in the suit in admiralty brought by Geo. U. Hind, C. A. Spreckels, Rudolph Spreckels, G. Wempe, Wm. Carson, H. D. Bendisen, Jas. H. Nelson, M. O. Silverson, P. O. Johansen, Geo. A. Nelson, N. J. McLeod, G. M. Fagerlund, J. S. Hellingsen, John Piltz and Henry Wetherbee vs. Wilder's Steamship Company, in the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, may be used as evidence and as exhibits in this case. Without prejudice,

however, to the right of either libelant or respondent introducing new and further evidence or exhibits.

Honolulu, October 8, 1900.

PAUL NEUMANN,
Proctor for Libelant.

KINNEY, BALLOU & McCLANAHAN,
E. B. M.,
Proctors for Respondents.

[Endorsed]: Filed October 9, 1900. W. B. Maling, Clerk.

In the District Court of the United States of America, for the Territory of Hawaii.

IN ADMIRALTY.

JOHN PILTZ,
Libelant,
vs.
The Steamship "CLAUDINE" and WILDER'S STEAMSHIP CO. (a Corporation),
Respondents.
} Libel.

Stipulation as to Evidence and Exhibits.

It is hereby stipulated and agreed between the proctors for the respective parties in the above-entitled cause

that when said cause shall come to hearing, the evidence, together with the exhibits, in the suit in admiralty brought by Geo. U. Hind, C. A. Spreckels, Rudolph Spreckels, G. Wempe, Wm. Carson, H. D. Bendixen, Jas. H. Nelson, M. O. Silversen, P. O. Johansen, Geo. A. Nelson, N. J. McLeod, G. M. Fagerlund, J. S. Hellingsen, John Piltz, and Henry Wetherbee vs. Wilder's Steamship Company, in the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, may be used as evidence and as exhibits in this case. Without prejudice, however, to the right of either libelant or respondent introducing new and further evidence or exhibits.

Honolulu, October 8, 1900.

PAUL NEUMANN,
Proctor for Libelant.

KINNEY, BALLOU & McCLANAHAN,
E. B. M.,
Proctors for Respondents.

[Endorsed]: Filed October 9, 1900. W. B. Maling, Clerk.

In the District Court of the United States of America, for the Territory of Hawaii.

IN ADMIRALTY.

JOHN PILTZ,
Libelant,
vs.
The Steamship "CLAUDINE" and WILDER'S STEAMSHIP CO. (a Corporation),
Respondents.
} Libel.

J. S. LOW,
Libelant.
vs.
The Steamship "CLAUDINE" and WILDER'S STEAMSHIP CO. (a Corporation),
Respondents.

Stipulation as to Taking of Depositions.

It is hereby stipulated by the parties hereto that on Friday, the 12th of October, A. D. 1900, at the hour of 11 o'clock A. M., the libelant in the above-entitled cause may take the depositions of John Piltz and David Robinson, respectively, before W. J. Robinson, Esq., the commissioner of the above-named court, and that said depositions may be read in evidence in said causes at the time of the trials thereof with the same force and effect as

the oral testimony of said two witnesses, subject to all legal exceptions, unless the attendance of said witnesses can be obtained at such trials.

Dated October 11, 1900.

PAUL NEUMANN,
Proctor for Libelants.
KINNEY, BALLOU & McCLANAHAN,
E. B. M.,
Proctors for Libelee.

[Endorsed]: Filed October 12, 1900. W. B. Maling, Clerk.

In the District Court of the United States, Territory of Hawaii.

IN ADMIRALTY.

J. S. LOW,
Libelant,
vs.
The Steamship "CLAUDINE" and WILDER'S STEAMSHIP CO. (a Corporation),
Libelees.
} Libel.

Stipulation as to Testimony and Exhibits.

It is hereby stipulated and agreed between the proctors for the respective parties in the above-entitled cause that the testimony and exhibits used and admitted in evidence in the Circuit and Supreme Courts of the Terri-

tory of Hawaii in the case of Geo. U. Hind et al. vs. the above-named respondent may be produced and used as evidence in the trial of the above case, and if an appeal is taken that the same may be produced and used as evidence in the United States Circuit Court of Appeals, or in such other court to which such appeal may be made.

And it is further stipulated that in the event of there being no appeal taken from the final judgment of this court, then said exhibits and evidence produced and used in the trial of the aforesaid case of Hind et al. vs. the above-named respondent may be produced and used as evidence and exhibits in the United States Circuit Court of Appeals in any appeal which may be had in said case, and for that purpose may be withdrawn from this court for transmission to the Circuit Court of Appeals in which such appeal may be pending.

The above agreement being without prejudice to the right of either party to introduce new evidence and further exhibits at any such hearing on appeal.

Dated Honolulu, November 30, A. D. 1900.

PAUL NEUMANN,
Proctor for Libelant.

KINNEY, BALLOU & McCLANAHAN,
E. B. M.,
Proctors for Respondents.

[Endorsed]: Filed November 30, 1900. W. B. Maling, Clerk.

In the District Court of the United States, Territory of Hawaii.

IN ADMIRALTY.

JOHN PILTZ,
Libelant,
vs.
The Steamship "CLAUDINE" and WILDER'S STEAMSHIP CO. (a Corporation),
Respondents.

Stipulation as to Testimony and Exhibits.

It is hereby stipulated and agreed between the proctors for the respective parties in the above-entitled cause that the testimony and exhibits used and admitted in evidence in the Circuit and Supreme Courts of the Territory of Hawaii in the case of Geo. U. Hind et al. vs. the above-named respondent may be produced and used as evidence in the trial of the above case, and if an appeal is taken, that the same may be produced and used as evidence in the United States Circuit Court of Appeals, or in such other court to which such appeal may be made.

And it is further stipulated that in the event of there being no appeal taken from the final judgment of this court, then said exhibits and evidence produced and used

in the trial of the aforesaid case of Hind et al vs. the above-named respondent may be produced and used as evidence and exhibits in the United States Circuit Court of Appeals in any appeal which may be had in said case, and for that purpose may be withdrawn from this court for transmission to the Circuit Court of Appeals, in which such appeal may be pending.

The above agreement being without prejudice to the right of either party to introduce new evidence and further exhibits at any such hearing on appeal.

Dated Honolulu, November 30, A. D. 1900.

PAUL NEUMANN,
Proctor for Libelant.

KINNEY, BALLOU & McCLANAHAN,
E. B. M.,
Proctors for Respondents.

[Endorsed]: Filed November 30, 1900. W. B. Maling, Clerk.

In the District Court of the United States, Territory of Hawaii.

J. S. LOW,	Libelant,	No. 8. IN ADMIRALTY.
vs.		
S. S. "CLAUDINE," etc.,	Libelee,	
and		
JOHN PILTZ,	Libelant,	No. 9. IN ADMIRALTY.
vs.		
S. S. "CLAUDINE,"	Libelee.	

Testimony.

These causes coming on for trial before the Court sitting without a jury, the following proceedings were had, the following counsel appearing:

PAUL NEUMANN, Esqr., appearing for Libelant.

Messrs. KINNEY, BALLOU & McCLANAHAN, for Libelee.

Hon. M. M. ESTEE, J., Presiding.

C. F. REYNOLDS, Official Reporter.

The COURT.—Gentlemen, are you ready?

Mr. NEUMANN.—We are ready.

Mr. McCLANAHAN.—We are ready.

The COURT.—Any objection in uniting the trial of these two cases?

Mr. NEUMANN.—I think they ought to be united. I will state to your honor the testimony will be the same with the exception of the loss of certain articles which Captain Piltz claims to have lost, for which he claims damages.

The COURT.—It is agreed by counsel that the case of John Piltz and the case of J. S. Low be combined, united for trial. If there is no objection the order will so stand.

Mr. NEUMANN.—With your Honor's permission, I will read the libel of J. S. Low first. (Reads.)

(The libel is duly verified by the libelant.)

The COURT.—I suppose the amount of damages is set up in the other case, that the rest of the libel is the same as in this case. Please read that part of the libel in the other case.

Mr. NEUMANN.—(Reads.)

The COURT.—Now, Mr. McClanahan?

Mr. McCLANAHAN.—(Reads the answer of the libelee.)

Mr. NEUMANN.—We have made a stipulation that the testimony given in the case of George U. Hinds vs. The Wilder Steamship Company may be used as the testimony in this case. It constitutes, so far as we are concerned—the other gentlemen have got a list of that which they have introduced, of the shorthand notes of the official reporter, which we propose to put in evidence. Al-

so a certificate of inspection, registration of the vessel. The deposition taken de bene esse of F. A. Nelson, Daniel McDonald, Andrew Young and Alexander Campbell. I introduce these papers in evidence in this case; they may be read, they being part of the record in the court above.

The COURT.—When you get through with your opening statement I would like to hear the answer.

Mr. NEUMANN.—It is understood that I may read this and then return the original testimony to the Supreme Court of the Hawaiian Islands.

The COURT.—Now, about returning the testimony. I don't know, under the rule; I will have to examine the rules; one of you might appeal from the judgment of this Court. Then the party appealing would have the right of access to the testimony; it can be read and have the reporter take it down. I don't think you will be permitted to take the testimony that you introduce here back to that court, for the reason it may be recorded here before it is recorded there. As I understand it the case has been disposed of by the other Courts.

Mr. NEUMANN.—We only want this for the convenience of the Court; this is taken down and we propose to substitute certified copies for it after your Honor has disposed of this case.

The COURT.—Anything that counsel will agree to in the matter will be satisfactory to the Court; the only object of the Court is to get at the facts.

Mr. McCLANAHAN.—We believe that on an appeal to the Circuit Court of Appeals there might be some ob-

jection raised to the introduction of the evidence; we will consent that the stenographer, the official stenographer of this Court, take the evidence as read from this copy down, just as if it had been delivered by the witnesses themselves; then if there is an appeal taken, a copy of his notes of the evidence can be taken and certified to by the clerk.

Mr. NEUMANN.—That is not satisfactory; our stipulation is that the testimony taken in the upper court may be used in this case, and such additional testimony as the parties are advised to offer to the Court. Now, what I want—

The COURT.—Have you got the stipulation?

Mr. NEUMANN.—The stipulation is as follows (reads):

The evidence stipulated to be read in this case is the evidence taken in the court above, in the Supreme Court, and the reading of that evidence has been stipulated for in this court. I don't say that the stenographer of this court shall take that evidence down; there is no stipulation to that effect. I insist upon the stenographer of this court taking down the evidence as given under this stipulation; then if there is an appeal taken by either side, we can have the official stenographer's notes of the evidence as introduced. To that I shall not object.

(Here the stipulation is read.)

The COURT.—Go on with your opening statement, Mr. Neumann.

Mr. NEUMANN.—I shall read that evidence and let the stenographer take it down, and we will use it as evidence.

Mr. McCLANAHAN.—Before we leave this subject, there is another matter that should be settled. We have here two models, and two smaller models, that were introduced as exhibits in the case, together with some maps, diagrams that were introduced as exhibits in the case in the other court, the upper court. Under the stipulation they may be introduced in this case, in this court. All through this evidence which the Court is to listen to reference is made to these exhibits. This lamp is one of them also to which all through the evidence reference is made; in fact, the evidence is unintelligible without the exhibits. The witnesses were on the stand and came down and pointed them out, the measurements, and explained their evidence from these little models. Now, we have these models here from the Supreme Court, and our stipulation to the Court that they shall be returned to that court, under no other circumstances would they allow them to be withdrawn; the evidence is here in the same way. The Court can see the difficulty, if these cases are appealed, as they undoubtedly will be, from your Honor's decision, taken by either side. I take it that these models must go up to the Circuit Court of Appeals, in order to make the evidence up there intelligible. In this court we cannot file them as exhibits here, because we have given our word to Judge Freer they shall be returned to that court.

The COURT.—Is that court through with the cases that it had?

Mr. McCLANAHAN.—We have appealed from the de-

cision, the final judgment of the Supreme Court to the Circuit Court of Appeals.

The COURT.—Which under the original law you had the jurisdiction to do, did you?

Mr. McCLANAHAN.—That is the question to be decided by the Circuit Court of Appeals—whether they had jurisdiction. The appellee denying our right to appeal, that is now before the Circuit Court of Appeals. If the Circuit Court of Appeals assumes jurisdiction in the case decided by the Supreme Court of the Territory, the Supreme Court of the Territory under the order of the Circuit Court of Appeals will send these exhibits up there for the use in the trial; if they do not assume jurisdiction in the case, we undoubtedly have a right to appeal from the decision of this case, or the libelant will have a right to appeal from the decision of this case, in which event we will want these exhibits to go up. If the Supreme Court is in possession of these exhibits and refuses to allow them to go out of their possession, I don't see how they can be introduced in evidence in this court, unless the Judges can get together and agree upon some course. I think we better, before we go any further, settle this question of exhibits.

The COURT.—My recollection is that the Court of Appeals have a right to order this Court to send all the exhibits, whether they are originals or not.

Mr. McCLANAHAN.—Unquestionably, but we cannot introduce these exhibits as evidence here.

The COURT.—Mr. Neumann, what have you got to say about it?

Mr. NEUMANN.—I don't think any question can arise. There is a question before the Circuit Court of Appeals, whether an appeal can be taken from the decision of the Supreme Court of the Territory. We maintain, and our proposition is, that such a thing cannot be done; that the only recourse that these gentlemen had was to carry it to the Supreme Court of the United States on a writ of error. As soon as this question is decided by the Circuit Court of Appeals, and if they should decide that they will not entertain the question of jurisdiction, the case is at an end. I don't think there will be any trouble with the Supreme Court about these exhibits and putting them into the hands of this Court, so we can use them.

Mr. McCLANAHAN.—Judge Freer would not let them pass out of the hands of the Supreme Court without our stipulation and agreement that they should be returned there. I cannot file these exhibits in this case on account of my obligation to return them to him.

The COURT.—I think I can end this discussion. The Court will not permit any testimony to be introduced in this or any other trial that cannot be used on the appeal; that is, if either party wished to appeal, it would be an absolute injustice; therefore, if it is offered or put in with an "if," the Court will not listen to any testimony of that kind. You might make copies now, for if the Court cannot retain the exhibits, then they cannot be introduced on this trial. If they are part of the trial, part of the case, why of course to intelligibly dispose of the case would require their use, wouldn't it, Mr. Neumann?

Mr. NEUMANN.—I do not believe there will be any difficulty. I suppose that can all be settled, for I think the Supreme Court will allow these to remain as exhibits in this court.

The COURT.—We know our jurisdiction. I think this Court knows that every exhibit introduced on the trial, if an appeal is taken, and if the Court of Appeals wants it, they are entitled to it under the rules of the Court. Rule 14 (reads) and also Rule 34 (reads).

Mr. NEUMANN.—I ought to state, I myself, my clients are not interested in the exhibitions of this model; it is the respondents, the libelees, who introduced them in evidence. We do not object to them. Now, then, unquestionably they can be left with the Court with other exhibits they file. Nothing goes unless the Court sees any reason why they should be retained for the purpose of use in this court. The Court would be authorized to put them in the possession of the marshal.

Mr. McCLANAHAN.—I insist on it to this extent, that stipulation is good as a whole, or it is no good at all; he cannot take out of the evidence the exhibits which are not in his favor and retain the exhibits which are in his favor. It is good as a whole or it is no good at all. All the evidence and the exhibits must go in, in this case, before your Honor or none. Now, we have been placed in this position; Judge Freer has temporarily allowed us to withdraw these from his court. We are tied hand and foot as to any power to introduce them in evidence, to place them in your Honor's court, in order that your Honor may retain control of them and transmit them on

the appeal. If the exhibits cannot be introduced, with this lamp which is important as an exhibit, which was an exhibit in the other court, then the evidence which I have stated as referring in the examination of the witnesses to this lamp and the models cannot be read, because that evidence then refers to something that is not before the Court and cannot be placed before the Court. It seems to me the only way out of this difficulty is to continue this whole matter until the Circuit Court of Appeals has decided the question of its jurisdiction; if it passes on that question adversely to the appellee, then I believe that Judge Freer will consent to the withdrawal of these exhibits from his court, for use in this case; if they pass on the question and assume jurisdiction up there, then these exhibits will go up there, and this case can wait that decision. I shall object to any use of the evidence at all, for under that stipulation that evidence cannot be used without these exhibits.

The COURT.—Supposing this Court consults with Judge Freer and we may come to an agreement as to what can be done in the way of allowing these exhibits to be used here on the trial of this case. For that purpose the Court will now adjourn until Friday, the 30th day of November, at 10 o'clock A. M.

Second day, November 30th, 1900.

Morning Session.

The COURT.—At the last session of this court it was understood and agreed that this Court should call on Mr. Justice Freer, with a view of seeing what could be done

in relation to certain exhibits, and in pursuance of that agreement this Court did call upon Mr. Justice Freer, and it was agreed between us that the best plan was for the attorneys to stipulate to use all of these exhibits in any case on appeal arising from that Court or this to the Circuit Court of Appeals; that you gentlemen stipulate and the Court will pass upon the matters as they come up. There can be nothing introduced here with an "if"—that is, with a possibility that if somebody else did not want to use it we can use it; therefore, the Court suggest that counsel better stipulate, unless it interferes with your rights to stipulate that the exhibits and all the exhibits used in the case, that if an appeal is taken to the Circuit Court of Appeals of the Ninth District that all the exhibits used in the other case may be used as exhibits in this case.

Mr. McCLANAHAN.—We do not agree to go into the trial of this case unless we can introduce these exhibits in evidence. Now, there are here in this court under our verbal agreement with Judge Freer to return them to him or to his court; now, if the Justice will consent to our filing them as exhibits in this case we would be glad to know it.

The COURT.—He does not consent to that. What the Chief Justice agreed to was this, that any exhibits in this case or in his case that were necessary to be used in all the cases on appeal in the Court of Appeals should be used in all the cases on appeal—I mean covering this identical question, that is the proposition; if you can agree, and I see no reason why you should not, but if

you cannot agree, then the Court will proceed with the trial, and when we reach the exhibits the Court will direct that a copy be made or as much of the original as will be satisfactory to the Court and all concerned.

Mr. McCLANAHAN.—The evidence of the libelant is being introduced under a stipulation, and under that stipulation it is agreed that these exhibits shall be also introduced. We do not propose to have Mr. Neumann introduce his evidence and we be denied the benefit of introducing the exhibits. In other words, to submit to such a one-sided stipulation, under which this evidence is introduced. This must go as a whole; it is good in whole or it's bad in whole; he cannot introduce the evidence and we be denied the right to put in these exhibits. So we might as well settle this question of the exhibits now; that these exhibits, if introduced in evidence here, shall be used in all of these cases in the Circuit Court of Appeals. What I want to know now is whether the Chief Justice requires me to return these exhibits to the custody of his court; if he does not I would like to go and be released from that obligation.

The COURT.—That subject did not come up. The simple proposition between Chief Justice Freer and myself was this: That exhibits to be used here on this trial, they could be used on appeal whilst here, and he said he had no objection to the removal and being introduced in this case.

Mr. McCLANAHAN.—I would like to go and be relieved by the Chief Justice of my obligation.

The COURT.—Yes, sir.

Mr. McCLANAHAN.—If the Court please, Judge Freer insists on having it understood that if there is any appeal taken in this case from your Honor's decision and the Court assumes jurisdiction in the other case on appeal, that your Honor will allow these exhibits to be produced up there in the trial of the other case; in other words, taken out of the custody of your Honor's court and filed in the Circuit Court of Appeals in the case that your Honor did not try. With that understanding he releases me from my obligation to return them to his court.

Mr. NEUMANN.—That is satisfactory.

The COURT.—Go ahead. The Court will make the usual order that each party pay one-half of the per diem of the reporter until the case is disposed of, and either party desiring the testimony will order it if it is needed and pay for the same.

Mr. McCLANAHAN.—I suppose your Honor wants the answer read?

The COURT.—Read it, if you desire.

Mr. McCLANAHAN.—(Reads the answer.)

The COURT.—You better read Low's first; that is, if there is no objection.

Mr. McCLANAHAN.—No, sir; the answers are the same.

(Reads.)

I just want to show to the Court a map, to give the Court some idea where this collision took place; that is

one of the exhibits in the case—Respondents' Exhibit "E," a map. This, if the Court please, is the harbor of Honolulu, and this is the regular course of the route of the steamship "Claudine" to go to the island of Molokai; this is the Molokai lighthouse, right here (showing).

The COURT.—How far is it?

Mr. McCLANAHAN.—About forty miles from here. This is the alleged course of the "Carson," southwest sixteen miles from Honolulu; this crosses the course of the "Claudine," at a point sixteen miles from Honolulu; that point, certain proof shows, is the exact distance from the port of Honolulu that this collision occurred.

Mr. NEUMANN.—The testimony states about twelve miles.

Mr. McCLANAHAN.—This map shows that line to be the regular course of the "Claudine," sixteen miles from Honolulu; that is drawn on a scale; these lines here—the Court will understand the evidence as it is adduced in the case.

Now, if the Court please, the libellant charges the respondent with fault in that it did not have a proper lookout, and in that it did not perform proper maneuver; and the respondent in the case alleges that it did not have the proper lookout; that it did not perform the proper maneuver, but that the "William Carson" had its starboard light illegally placed and invisible from the bridge of the "Claudine" until such time as the change of positions of the two vessels it became visible; that it was improperly fixed, in that it could not shine from ahead

to two points abaft the beam on the starboard side, as required by law. Now, the law reads that it must shine straight ahead two points abaft the beam; that would be an angle like that. We allege that this light could not shine that way, and did not shine that way; therefore we could not have seen it and avoided the collision, and the fault of the collision lay wholly with the barkentine, for the reason the light we did see, "the bright light," which we reasonably supposed was the masthead light of a steamer, for sailing vessels are not allowed to carry white lights or bright lights—

Mr. NEUMANN.—I would like to put these vessels on the course they were taking; this purports to be the "Carson" on a southwest course.

The COURT.—Does it appear that the "Carson" was going into the port of Honolulu?

Mr. McCLANAHAN.—It is alleged that she was on the trip from Newcastle to Honolulu, and that she was bound for this port.

Mr. NEUMANN.—Now, we claim that this is nearly the position of the vessels at the time, and we claim that the "Carson" was on the southwest course; that is in proof; it is contradicted upon a theory that Mr. McClanahan, and which we will hereafter listen to, that she could not have been on that course; we claim that would be totally immaterial; the "Claudine" was coming on her trip to Lahaina, and that would be about the position of the vessels. We claim that the "Claudine" came along, all of her lights were burning at the time; as she

came along she saw some lights, according to their own testimony, but could not make it out, what it was, and that she proceeded with the same speed as before, this being at night, 8:30 o,clock; a light was seen—

The COURT.—I suppose it was dark?

Mr. NEUMANN.—Yes, sir; it was dark. That there was on board of the "Claudine",a man at the helm, who was stationed there, and one man on the bridge, the second mate, who had charge of the steamer; those were the only two men on the steamer at the time of the collision, on watch. As this vessel approached the other one, and after the second mate had gone below, from here (showing,) this being the route he had taken to find the captain, and returned, he ported his wheel and brought her around this way, so that the steamer was standing in about this position (showing), and after the collision they came together, with the starboard side of the barkentine. Now, our claim is this, may it please the Court: there was an insufficient watch on the part of the "Claudine"; that it was the duty of the "Claudine" under the act, which you are familiar with, upon the approach of a light in the night to proceed with caution. That when she came, when she saw that light, and could not make it out, as Mr. McNeill testified, it became his duty to slacken the speed of the steamer, when he saw that there might be a question. When he ported the helm that brought the steamer up in this way, so that she struck the barkentine right there (showing), I claim if she had struck the barkentine in this position (showing) that the vessels would not have come together.

Your Honor understands the position they were in after the collision; that would show she must have been struck this way (showing); I mean that both vessels veered off after the blow was struck and came side by side. Now, we claim on behalf of the libelants we were on our course; it was our duty to proceed on our course and not to swerve from it. That it was the business of the steamer to avoid the collision, to maneuver in such a way as to do it. At the time when this light was first seen by the second mate, this steamer being on her course, would most likely have passed; that there could not have been any collision had she kept on her course, but the entire fault was in not knowing what he was doing, making wrong maneuver in porting his helm and thereby striking our vessel. I am not able to state to your Honor what was the reason of this maneuver of Mr. McNeill's, unless he thought he saw some light on the vessel coming the other way and passing ahead of her, and he might have thought that he had time to pass across her bow. Whatever he did do was wrongly done, and that is clearly proven in this case, by the Captain giving, reversing the order that he had given--

Mr. McCLANAHAN.—I think Mr. Neumann is going too much into the evidence and making an argument, and I object.

Mr. NEUMANN.—I am stating what I intend to prove.

Mr. McCLANAHAN.—Explaining Mr. McNeill's motives for doing a certain thing which he may have done is argumentative.

The COURT.—The Court will read over the testimony. The Court was simply trying to get some idea of what the issue was.

Mr. McCLANAHAN.—So that the Court can hear the evidence intelligibly.

Mr. NEUMANN.—Mr. McNeill was on board of the vessel in charge—I am stating now what I intend to prove. That he committed a grave error in leaving his position—he being the only man on the lookout—and in going down to hunt the captain up when that light was in sight, and must have been close. Immediately after his return from an unsuccessful search for the captain he gives one blast of the whistle and orders the helm to port; that brought the vessel around, and made the collision possible, which might have been avoided altogether (that is our position), and we claim we had our lights brightly burning, that they could have been seen.

The COURT.—You expect to prove that?

Mr. NEUMANN.—We claim that will be proven by the evidence.

The COURT.—You expect to prove that you had your lights bright and burning? Where?

Mr. NEUMANN.—Right there; in their proper places, as carried by a vessel of this build. I am stating exactly as we claim we will prove.

The COURT.—There was a green light on the starboard side?

Mr. NEUMANN.—Yes, sir; and a red light on the port side.

The COURT.—Where was the green light?

Mr. NEUMANN.—Right there (showing); there is the screen on board on which is fastened the green light; here is the red light, on the other side, and we claiming this vessel coming over there (showing) had ample chance to see that light, and that, as a matter of fact, it was seen by the first mate of the "Claudine"; that Mr. McNeill couldn't see anything.

The COURT.—Suppose the "Claudine" was coming nearly head on?

Mr. McCLANAHAN.—You admit that the light was illegally placed?

Mr. NEUMANN.—I do not.

Mr. McCLANAHAN.—You must claim that the light was seen head on.

The COURT.—The Court understands that the lights of a sailing vessel, if it is legally placed, that it must be so placed that it will shine a head and two points abaft of the beam. And the sails on this vessel, if properly placed, and that question the Court does not pass upon, that if this vessel was sailing with the wind right after these sails would necessarily obscure the light, would they not?

Mr. McCLANAHAN.—Then it would not be legally placed, which I asked Mr. Neumann to admit.

Mr. NEUMANN.—And I do not admit it.

Mr. McCLANAHAN.—The law provides that the light shall be so fixed as to shine from straight ahead to two points abaft of the beam.

The COURT.—The United States Statutes regulates the maneuvers of both steamers and sailing vessels; therefore you gentlemen, in speaking about it, confine yourselves to those points that are regulated by the law.

Mr. NEUMANN.—We claim then, your Honor, that this vessel was insufficiently manned, and that the man that was in charge and on the lookout on the bridge of this steamer left his post on the bridge, no matter for what purpose—as he says, to find the captain—left it twice, in fact, after he had seen the light, which turned out to be the light of the "Carson," because the "Carson" was the only vessel that was in the neighborhood there.

The COURT.—What light was that—did he describe it?

Mr. NEUMANN.—We claim that it was our green light.

The COURT.—They claim that it was a white light from the cabin.

Mr. NEUMANN.—The bright light from the cabin or the masthead.

Mr. McCLANAHAN.—We were justified; we saw a bright light, and we conjectured that it was either a bright light or the masthead light of a steamer.

The COURT.—Of course, under the law the steamers have to give way to sailing vessels, unless the sailing vessel is at fault, and the whole answer is an attempt to show, as I understand, the reason for your not navigating her was the fault of the sailing vessel; is that it?

Mr. McCLANAHAN.—That it was the sailing vessel's fault, that said from the improper placing of the light.

Mr. McCLANAHAN.—We claim that it was the fault of the sailing vessel.

Mr. NEUMANN.—And we claim that it was the fault of the steamer.

Mr. NEUMANN.—It makes it the duty of the sailing vessel not to deviate from her course. In trying this case I will offer in evidence first a copy of the certificate of inspection of the "Carson."

The COURT.—Is there any objection to the introduction of it?

Mr. McCLANAHAN.—I object to the offer on the ground that it is incompetent, irrelevant, and immaterial, the same being a copy of an original record, not the record itself. It is a certified copy; there is nothing there to show to your Honor that that is the signature of the one who certifies to it; it is irrelevant and immaterial.

Mr. NEUMANN.—The same objection was made in the other court.

Mr. McCLANAHAN.—I object to it and it was admitted.

Mr. NEUMANN.—Read and proved in the other court, in the Circuit Court.

Mr. McCLANAHAN.—I will withdraw my objection.

The COURT.—Let it be admitted.

Mr. NEUMANN.—It reads as follows:

"By Authority of the United States of America."

CERTIFICATE OF INSPECTION

For

FREIGHT SAIL VESSELS OF OVER 700 GROSS TONS.

Name of Sail Vessel: "WILLIAM CARSON."

State of Washington, }
District of Puget Sound. } ss.

Application having been made in writing to the undersigned Inspectors for this District, to inspect the Bkn. rigged sail vessel "William Carson," of 890 gross tons; home port, San Francisco, in the State of California; hull constructed of wood, whereof Geo. W. Hind is managing owner and John *Piltx* is master, the undersigned, United States Local Inspectors of Steam Vessels, do certify that, in accordance with an act of Congress approved December 21, 1898, they inspected said vessel on the 1st day of July, 1899, at Port Blakely, in the State of Washington, that she is of a suitable structure for the service in which she is to be employed, has suitable accommodations for the crew, is in a condition to warrant the belief that she may be used in navigation with safety to life when not loaded with draft of water exceeding feet inches, and is permitted to navigate the waters of any ocean for one year from the date of said inspection.

Signed by the United States Local Inspectors.

This certificate expires July 1st, 1900.

The above form of inspection certificate was adopted by the Board of Supervising Inspectors of Steam Vessels at the annual meeting held in January, 1899.

It is marked Libelant's Exhibit No. 1.

Mr. NEUMANN.—I next desire to offer in evidence, in the Low case only—it is not necessary in the other case—the abandonment, by the parties interested, viz., Hind, Rolfe & Co., to the Fireman's Fund Insurance Company, by the owners of the freight, Hind, Rolfe & Co., and all their claim to any damages that may have arisen from this collision.

The COURT.—That is an assignment?

Mr. NEUMANN.—That is an abandonment. The underwriters are placed in the position of the insured; they paid the loss, and whatever damages there may be are assigned to the insurance company.

The COURT.—Was that introduced at the other trial?

Mr. NEUMANN.—No, we could not then introduce it because I didn't know at that time that the plaintiff's agent had that right.

The COURT.—It is introduced now; does it not pass the title to all the property and interest that might arise by reason of this trial if judgment should be obtained? That is an assignment.

Mr. NEUMANN.—Call it an assignment.

The COURT.—Any objections?

Mr. NEUMANN.—It is a subrogation.

The COURT.—Read the whole of it.

Mr. NEUMANN.—I will read it in evidence in the Low case only, as it has no application in the Piltz case, the notice of abandonment, which is as follows:

NOTICE OF ABANDONMENT.

To the Fireman's Fund Insurance Company.

San Francisco, March 23d, 1900.

Please take notice that the Bkt. "William Carson," while on a voyage from Newcastle, N. S. W., to Honolulu, was in collision with Str. "Claudine" on night Dec. 27, '99, about 10 miles off Diamond Head.

On this vessel we have insured with you under your open Policy No. 1922, Endorsement 64, the sum of six thousand and 00-100 dollars, upon freight as per Invoice and Bill of Lading annexed hereto.

We therefore hereby abandon to you as insurers on the said freight, on Bkt. "William Carson," all our right, title, and interest in and to the same, in the proportion that the sum insured thereon bears to the valuation in said policy, and give notice that we intend to claim from you the whole sum insured as for a total loss.

And we hereby assign, transfer, and convey absolutely to you all our right, title, and interest in and to the said abandoned property and subrogate you in our place and stead as to all claim which we now have, or may hereafter acquire, in law or in equity, as against any person or persons, vessel, or vessels, corporation or government, for reimbursement, damages, or compensation, in consequence of the loss so sustained by us as aforesaid; to-

gether with the right and privilege of suing for the same in our name, but without cost to us.

HIND, ROLFE & CO.

Witness:

P. M. URMY.

San Francisco, Cal., March 23, 1900.

Received from the Fireman's Fund Insurance Company of San Francisco, six thousand 00-100 dollars, in full, total loss under their open policy No. 1922-64, covering freight per Bkt. "William Carson," from Newcastle, N. S. W., to Honolulu, said vessel having been in collision with Str. "Claudine" on night Dec. 27, '99, about 10 miles off Diamond Head.

And the said company having paid the above amount, are hereby relieved from any further claim whatsoever on account of above disaster, by reason of their insurance per said vessel under the above policy.

Adjusted, ————————.

HIND, ROLFE & CO.

$6,000.

Mr. NEUMANN.—Here is a copy of a letter to J. & A. Brown, signed by Hind, Rolfe & Co. It reads as follows:

San Francisco, Cal., 15th September, 1899.

Messrs. J. & A. Brown, 303 California Street, City.

Dear Sirs: We beg to confirm the verbal arrangement you made with our Mr. Rolfe regiving you the option of sending the "William Carson" to Honolulu, in which case the freight is to be eighteen shillings and six pence (18.6) per ton, other terms and conditions as per charter-

party of April 22d, '99. It is understood that you are to pay us the thirty-five pounds ten shillings (£35. 10.0) for cancellation of original charter to Messrs. Cheney, Egger's & Co., of London.

Yours very truly,

(Signed) HIND, ROLFE & CO.

Mr. NEUMANN.—Here is the charter-party, if your Honor please, made between Hind, Rolfe & Co. and James and Alexander Brown; shall I read it?

The COURT.—No, it is not necessary to read that. I see that they recognize, acknowledge, that they received six thousand dollars; was that actually paid?

Mr. NEUMANN.—Yes, sir.

The COURT.—In money?

Mr. NEUMANN.—Yes, sir; by the Fireman's Fund Insurance Company.

The COURT.—To whom?

Mr. NEUMANN.—To Hind, Rolfe & Co; they were the freighters; they were entitled to the freight on the vessel.

The COURT.—Are you suing them for that identical money?

Mr. NEUMANN.—I am suing for the damage caused by the collision by which we had lost. We subrogated to the insurance company, and under our contract it gave them the right to press it, and they in turn make the assignment which I will now produce and read: It is as follows:

"For and in consideration of the sum of ten dollars to us in hand paid by J. S. Low, of Honolulu, Hawaiian Islands, receipt whereof is acknowledged, we, the undersigned, Western Assurance Company (of Toronto, Canada), do hereby sell, assign, and transfer unto said J. S. Low all of our right, title, and interest in and to the whole of the cargo of the barkentine 'William Carson,' lately sunk by collision with the steamer 'Claudine,' and in and to any and all claims which we, the said company, have against the Wilder Steamship Company, owner of the steamer 'Claudine,' and against the said 'Claudine,' and against any and all persons or corporations whatever for damages and losses accruing to us by reason of the loss of the cargo aforesaid. The rights and claims hereby assigned by us to the said J. S. Low are the identical rights and claims transferred and secured to us in and by the abandonment and indorsed bill of lading hereunto attached.

In witness whereof, the said Western Assurance Company, by its duly authorized agents, has hereunto set its hand the 28th day of August, 1900."

The COURT.—Then your point is that Low not only takes the place of the freighters, but of the insurance company, or both; that is to say, in the assignment or subrogation on the part of the insured to the insurers, and the insurers assign that claim to J. S. Low. Who is J. S. Low?

Mr. NEUMANN.—He is the company in Hind, Rolfe and Company herein, Honolulu.

The COURT.—To whom this freight was consigned?

Mr. NEUMANN.—Yes, sir; who were entitled to the freight on the coal for carrying it on the "Carson." Now, for the purpose of convenience the transfer was made by the insurance company to Mr. Low so that he could bring this suit, and I offer it.

The COURT.—Any objection?

Mr. McCLANAHAN.—No, sir.

The COURT.—Let it be marked Libelant's Exhibit No. 2.

Mr. NEUMANN.—I next wish to offer in evidence, under the same circumstances, the relinquishment subrogation of Messrs. James and Alexander Brown, who were the owners of the cargo, the cargo of coal that the vessel carried; they gave their subrogation to the Western Assurance Company, a foreign corporation, they having insured the cargo of coal for the amount of $3,500.00, this being transferred to the Western Assurance Company; they sue for the amount they actually paid as insurance to James and Alexander Brown, and the assignment reads as follows:

"For and in consideration of the sum of ten dollars, to us in hand paid by J. S. Low, of Honolulu, Hawaiian Islands, the receipt whereof is acknowledged, we, the undersigned, Western Assurance Company (of Toronto Canada), do hereby sell, assign, and transfer unto said J. S. Low all of our right, title, and interest in and to the whole of the cargo of the barkentine 'Carson' lately sunk by collision with the steamer 'Claudine,' and in and to any and all claims which we, the said company,

have against the Wilder Steamship Company, owner of the steamer 'Claudine' and against the said 'Claudine', and against all persons and corporations whatever for damages and losses accruing to us by reason of the loss of the cargo aforesaid. The rights and claims hereby assigned by us to the said J. S. Low are the identical rights and claims transferred and secured to us in and by the abandonment and indorsed bill of lading, hereunto attached."

Mr. McCLANAHAN.—I have no objection to it.

The COURT.—It is marked Libelant's Exhibit No. 3.

Mr. NEUMANN.—I will now, may it please your Honor, read a part of the testimony in the other court, in the Territorial Court, First Circuit, which is as follows:

Testimony of F. A. NELSON, being duly sworn, testified as follows:

Direct Examination.

(By Mr. NEUMANN.)

Q. What is your name?

A. F. A. Nelson.

Q. What was your position on the barkentine "William Carson"?

A. Second mate of the barkentine "Carson."

Q. Where did you ship? A. From Newcastle.

Q. Are you familar with the waters around the Hawaiian Islands?

A. I have been to Honolulu about a half a dozen times. I was here a year ago about this time or a little later—about a month later.

Q. State what happened on board this vessel on December, the 27th, 1899.

A. We were run down by the steamer "Claudine."

Q. What time of day was it?

A. I cannot tell you the time. It was about twenty minutes to nine, after the striking of one bell. I had a man at the wheel for about ten minutes before she struck us. It must have been about twenty minutes to nine.

Q. At what place near Honolulu did this take place, this collision?

A. I took no bearings of Diamond Head light, but should judge we were about ten or twelve miles off the entrance of the harbor here.

Q. How were you sailing?

A. Heading on a southwest course, and the wind was from the south and east. We were sailing free, with square yards.

Q. When did you first see the "Claudine"?

A. A few minutes after eight o'clock; when I came on deck I saw the steamer, and I went back and got my glasses and saw that it was a steamer's mast. I could see the reflection from the lights in her deckhouse.

Q. About how far away from you was she in point of time or distance?

A. It appeared to me that she was coming out of the entrance of the harbor, probably outside of the entrance, and possible in the entrance.

Q. You were how far out at that time?

A. It is hard to tell, but between ten and twelve miles, I should judge.

Q. How was the steamer heading?

A. I could see her sidelights then, but I see them shut the lights afterwards. I saw her red light first and then a minute or two afterwards I saw her green light.

Q. Which way was she coming?

A. Right to our starboard side.

Q. What else did you observe as she was coming towards you—did you hear any signals from the steamer?

A. When she was probably half a mile off, something like that distance, she appeared to head for our starboard quarter and looked like she might strike us. All at once she blew one whistle and ported her helm and then struck us on the starboard bow.

Q. At what place on the starboard bow?

A. I looked over a few seconds after she struck us, and it was dark but it was between the cathead and the hawse pipe, I saw a terrible big hole. It was forward of the cathead.

Q. What was the result of the collision, so far as your vessel was concerned?

A. She commenced to fill fast. Water was pouring in.

Q. What was the further effect on the vessel?

A. No further effect than that she filled fast and settled down.

Q. Did she keel over?

A. Not before everybody was leaving her she turned over to starboard and got on her beam end. Her sails kept her up, I suppose.

Q. What did you do then, before she keeled over?

A. About that time I jumped aboard this steamer; I grabbed hold of a rail and got on her.

Q. Did you observe the "William Carson" after you got on the steamer? A. Yes.

Q. For how long a time did she remain under your observation? A. It was not very long.

Q. Was it an hour?

A. It was not a quarter of an hour.

Q. How did you come to lose sight of her?

A. I never lost sight of her before the steamer was ready to go toward the bar.

Q. She remained under your observation for about a quarter of an hour?

A. Yes, when the steamer left we went toward the bar.

Q. The steamer returned to Honolulu did she?

A. Yes, sir.

Q. At the time you last saw the vessel in what condition was she?

A. Lying on her beam ends, and remained that way during the time I continued to see her.

Q. How was the night?

A. It was a cloudy night. The horizon was clear; you could see the stars once in a while but overhead it was cloudy.

Q. Was it so dark that you could not see the hull of the vessel when she blew her whistle?

A. I could see the boat was black painted. I was looking at it with my glass just about the time she blew the one whistle.

Q. Can you tell the Court how long it was after she blew the one whistle before she struck the vessel what time elapsed?

A. It is hard to say. It might have been ten minutes, it might have been less.

Q. You are satisfied that it was less than ten minutes?

A. It might have been less.

Q. At what speed was the "William Carson" sailing at the time?

A. I don't think we were going faster than two and a half or three knots an hour.

Q. How was the water?

A. There was no choppy sea, but there was a swell.

Q. Was it the usual swell?

A. It was such a swell as we have here.

Q. It was not rough? A. No, not rough.

Q. How about the sidelights?

A. We were burning sidelights.

Q. On board of the "Carson"?

A. They were burning brightly. I looked at those sidelights about a quarter of an hour before the vessel struck us. The sidelights were first-class lights and were burning brightly.

Q. After you boarded the steamer did you see either of the sidelights?

A. The starboard sidelight was burning brightly then. I could not see the other. The starboard sidelight remained burning as long as I could see it.

Cross-Examination.

(By Mr. BALLOU.)

Q. What was your last port? A. Newcastle.

Q. What was your cargo?

A. Coal for Honolulu.

Q. You came right up from Newcastle? A. Yes.

Q. Which side of the island of Hawaii did you pass?

A. On the weather side, coming through Molokai channel.

Q. You went up on the weather side?

A. The eastern side of Hawaii.

Q. And you came down between Molokai and Oahu?

A. Yes.

Q. Who are your agents of the vessel at Newcastle?

A. I don't know.

Q. Explain to the Court what you mean by barkentine.

A. She was a four-mast barkentine; three of the masts rigged fore and aft and the fore mast square rigged.

Q. The vessel had four masts? A. Yes.

Q. And the other three were rigged like a schooner?

A. Yes.

Q. With the ordinary booms gaff and top sails?

A. Yes.

Q. You were running how, on what tack?

A. On port tack.

Q. In that case where are the boomsail three masts?

A. On the starboard side.

Q. And when running free that means they are well on the side?

A. Pretty well stuck out on the starboard side. Not much over the rail; of course the spanker boom is more than the others.

Q. When did you go on watch?

A. At eight o'clock.

Q. What was the watch that you relieved?

A. I relieved the mate's watch.

Q. Do you know who is on the mate's watch besides the mate?

A. There are three seamen on the mate's watch.

Q. Who are those three seamen?

A. Three able seamen.

Q. Who are they? Name them.

A. I could not say; one's name is Stewart, and one of the other's name is Mahony, but he signs his name different; I believe that the third one—I don't know his name, he is a boy.

Q. If I should go over the names of the seamen would you know the names? A. Yes, I think so.

Q. Give me the names of your watch.

A. One's name was McDonald, and another was named Young and Campbell.

Q. Alexander Campbell? A. Yes.

Q. The third one on the mate's watch was not the cook, was he? A. No.

Q. Was it the carpenter?

A. No, he didn't stand watch.

Q. It would leave it between the seamen, Albert Ossend and Oscar Nelson, would it not—Oscar the cabin boy?

A. Oscar was not the cabin boy; he was on the mate's watch.

Q. Is he any relation of yours?

A. He is no relation of mine.

Q. How long had that mate's watch been on deck?

A. From six to eight?

Q. Dog watch? A. Yes.

Q. Can you tell me when the lights were put out that evening?

A. We put out the lights at sunset.

Q. What watch was on—when was sunset?

A. That evening before six o'clock, I think.

Q. Was your watch on? A. Yes.

Q. When the lights were put out?

A. Yes, it was a little before six when the lights were put out.

Q. Who put out the lights?

A. Most of the time the sailors put the lights up in their boxes.

By Mr. NEUMANN.—What lights are you speaking about putting out?

A. The sidelights. They were put in their places.

(By Mr. BALLOU.)

Q. You were on watch when those lights were put out?

A. I think they were put out during my watch. I will not swear to it. Generally they were put out pretty early.

Q. Do you know on this particular night who lit the lights? A. The carpenter, it was his business.

Q. Do you say that simply because it is the carpenter's business to light them or because you remember that he did on this particular night light them?

A. There is no other man to handle the lights, or that had any think to do with the lights. The carpenter lights the lights.

Q. Do you remember of seeing him do it this particular night?

A. No, I did not see him light it, but there is no other man that does it.

Q. It is his duty to do it? A. Yes.

Q. Do you know what sailor put them into their boxes after they were lit? A. No, I don't know.

Q. Where are the lights kept during daytime?

A. In the carpenter's shop.

Q. Whereabouts is that?

A. On the port side, forward house.

Q. Do you mean the house on deck? A. Yes.

Q. Upon deck? A. Yes.

Q. With how many sets of lights is the "William Carson" provided or was she provided with?

A. Two sidelights, two riding lights and two small lights. The riding and anchor lights are the same; she had two color lights. She had no extra light, one red and one green.

Q. You don't know of any extra lights, do you?

A. No, not of the sidelights.

Q. The other lights you referred to are white lights?

A. Yes.

Q. To use when the vessel is at anchor? A. Yes.

Q. Those two lights, the red and green lights, are kept, or were kept, in the carpenter shop?

A. They were always kept there during the day.

Q. How are these lights fastened in the box?

A. There is a lanyard in the head of the light to make it fast around the rigging.

The COURT.—Is that one of the lights?

Mr. McCLANAHAN.—Yes, sir.

THE COURT.—The ship is here now?

Mr. NEUMANN.—No, the other day she was floated away; we don't know where she is now.

The COURT.—There is not any of it left?

Mr. NEUMANN.—No.

The COURT.—Now, that was from what side of the ship?

Mr. McCLANAHAN.—The starboard side of the ship. "And something in the shape of a tongue in the light box, or a socket light, to keep it steady."

Q. In other words, there is a tongue in there?

A. On the light box.

Q. A tongue on the box and a socket in the light so you put in the light like this?

A. Yes, and it is made fast either around the light box or the slot around the rigging.

Q. And does it go around the lantern or through any hole?

A. This is the light and here is the top and here is a bale like—

Q. What do you mean by bale B-A-L-E?

A. The same as you have on a can, like in the neck of a can.

Q. And the purpose is to put the lanyard through?

A. Yes.

Q. You take the lanyard and fasten it through this?

A. Yes, and take two or three turns around the rigging through this neck.

Q. And when the light is in there is it pretty secure?

A. Yes, it cannot get out of there.

Q. You did not put out (hang out) those lights that night? A. No.

Q. Whereabouts on the "William Carson" are the light boxes in which you put out those lights?

A. In the spanker rigging.

Q. State to the Court which mast it is on.

A. The mast furtherest aft.

Q. If this is the bow on the boat the light boxes are here, almost at the stern of the vessel?

A. Not exactly at the stern.

Q. How far from the stern of the vessel?

A. They might be between twenty-five and thirty feet from the stern.

Q. And from the mast of the vessel?

A. They are on the rigging here much further aft.

Q. Abreast of this last mast?

A. Yes, where the rigging comes down to the side of the vessel.

Q. When you are running free with the booms over on that side of the vessel, if her masts and all of her booms are over on this starboard side, here is the light, and you are on the port tack, and all the booms over here on the port side, is it not likely to obscure that light from anyone coming down head on you?

A. We never slacken the main sheet, so the boom is on the rail. The main mast and the mizzen booms are never slackened so that the booms are over the rail, but the spanker boom frequently is, but not so as to obscure the light.

Q. From what direction was the "Claudine" approaching you when you first saw her lights?

A. She was headed in a southeasterly direction. It was very hard to tell what course she was steering, but she was headed in a southeasterly direction.

Q. How was she with regard to your bow?

A. Heading right for our starboard bow.

Q. Just abeam of you when you first saw her?

A. Yes, she might have been a half a point off us, one way or the other. When I could see both lights she must have been coming straight on.

Q. If your vessel was heading southwest like this, and that is the steamer, she came ahead like this or like this?

A. This is the way, the beam coming against our side.

Q. What were you doing when you saw her yourself?

A. I was standing on the poop-deck, but the captain was there on the quarter-deck.

Q. How many men were on deck when the "Claudine" was first sighted?

A. The captain and me and three men in my watch. If there were any other men of the other watch on deck I could not say, I don't know.

Q. Is it usual for any of the men of the other watch to be on at that time?

A. I don't know. They might sometimes be on deck for all I know, but I could not say. They have the privilege of being on deck.

Q. The captain was on the poop-deck?

A. On the quarter deck.

Q. The same thing?

A. There is a little difference. One is right over the cabin, and the other is on the stern. The quarter-deck is the higher—two feet higher.

Q. On which deck is the wheel?

A. On the quarter-deck.

Q. Who was at the wheel? A. McDonald.

Q. Who set the course? A. The captain.

Q. When did he last set it, did he change it?

A. Not that I know of.

Q. When your watch came on you were given a south-west course?

A. The men whom I relieved were given the course, I guess. I know I was steering southwest. I relieved the man and gave a southwest course to steer.

Q. What did you do from the time you sighted the "Claudine" up to the time she blew her whistle?

A. I was standing there and looking with my glasses.

Q. Did you have your glasses with you when you first saw her?

A. A few minutes after eight o'clock I went to my room and got my glasses, before I had sighted the "Claudine." As soon as I came on deck I saw the steamer's mast light.

Q. Did you go for your glasses because you saw the "Claudine's" light? A. Yes.

Q. You saw the "Claudine's" light first?

A. I saw the light and then went to get my glasses to see what light it was.

Q. Had you seen the Diamond Head light?

A. I don't remember.

Q. Did you see it at all that evening?

A. I will not swear to that. I did not know the Diamond Head light was going in fact. There was no light on Diamond Head when I was here before, and I was not looking after it, because the captain was on deck and had charge of the deck.

Q. You stayed on the poop-deck all of the time until she blew her whistle? A. Yes, sir.

Q. When did you first see there was any danger of her being struck?

A. There looked to be danger at the time she changed her course and ported her helm. It was almost impossible for her to go clear. It was only a minute or two before she struck. The way she was headed it was plain she could not get clear.

Q. There is considerable difference between a minute or two and seven or eight minutes?

A. It is hard to say. It was a short time.

Q. Until she blew her whistle you thought she would go clear?

A. It appeared that she might slip clear, or she might hit us on the starboard quarter. If she kept on her course very likely she would slip clear, but putting her helm the other way there was no show to get clear then.

Q. Do not the majority of the sailing vessels carry their lights further forward?

A. A good many do, but some do not, so long as they have them where they can be seen forward.

Q. From your standpoint the situation was like this; there is a southwest course? A. Yes.

Q. And the "Claudine" just planned by the starboard quarter?

A. Yes, she might possibly have cleared there.

Q. It was a question of going like this? A. Yes.

Q. And the last minute she ported her helm and it took her up here and she struck like this? A. Yes.

Q. Your light was visible to her? A. Yes.

Q. If she discovered it then, and thought your light was forward, suppose the steamer thought that was the situation, the steamer thought you carried your lights

like a good many other sailing vessels, would it not have been better for it to have gone ahead of you rather than to put her helm to starboard? A. I don't think so.

Q. Why not? If she had known just where the light was, and thought the light was up there, would it not have been good seamanship? Supposing you had been on the "Claudine," and had not known which place the sailing vessel was carrying her lights, and had your choice between turning starboard helm or porting the helm, which would you have done?

A. I think I should have taken the stern. We were going ahead, at the time but by going astern we passed ahead of her.

Q. You were going two and a half or three knots rate? A. Yes.

Q. If your lights had been forward would not the chance have been better for the "Claudine," her chance for passing this way of you?

A. No, I don't think it was advisable to cross the vessel's bow except they were positive they could go clear. Why did they blow their own whistle?

Q. I am not answering questions, Captain. About this time, between the time the "Claudine" blew her whistle and the time she struck you, which you said was about ten minutes to Mr. Neumann, and when talking with me you said only a minute or two, how far away was she when she blew her whistle?

A. They only blew one whistle. It might have been half a mile or less.

Q. It would take nearer to ten minutes than one minute to cover that?

A. It was more than a minute or two; it might have been eight or ten minutes, it would not be more than ten minutes; the steamer was going at a pretty good speed.

Q. What were you doing this eight or ten minutes?

A. Watching to see what the steamer would do.

Q. As soon as the steamer blew her whistle and ported her helm you saw there was danger?

A. Yes, but I could not do anything.

Q. Where were you standing?

A. On the poop-deck.

Q. What did the captain and the crew do during that time?

A. The captain sung out to them, "What are you trying to do"? He hallooed to them.

Q. While they were a distance of a half a mile away?

A. No, when they were closer.

Q. The man at the wheel stayed at the wheel?

A. Yes.

Q. Did you hear any orders to change the wheel?

A. No.

Q. What did the other two men on watch do?

A. One was on the lookout on the forecastle head, way up in the forward mast.

Q. Which one was that? A. Campbell.

Q. Did you see him come down?

A. He stayed there.

Q. That is, how up in the air, that lookout—how many feet from the deck?

A. About five feet from the deck; it is on the forecastle.

Q. The other man was who?

A. Andrew Young.

Q. And he was where?

A. He was down on the main deck, down where he could hear if any orders were given.

Q. What did the captain do during that time?

A. He was on the quarter deck, close to the man by the wheel.

Q. How soon was the ship on her beam ends after she was struck? A. In about ten minutes, I think.

Q. That is, the hole that was made in the bow was filling, and she turned over with her port side up.

A. Yes.

Q. Which light was it you told Mr. Neumann you saw after the collision? A. The starboard light.

Q. The "Claudine" was staying on the starboard side?

A. She was going down gradually and I was on the "Claudine" on the starboard side.

Q. When did you lose sight of the starboard light?

A. When she commenced to keel over, the starboard light went under the water.

Q. It is there yet, is it?

A. I don't know. The light box was lying on Wilder's wharf. I know the light boxes where the lights were put in, so they could not be there now. Both the starboard and the port boxes.

Q. They must have gone under the vessel to get the starboard one.

A. They have not got the light as I know, but they have the boxes the lights were in.

Q. Do you know that those boxes are your boxes?

A. Yes, those are the boxes, and the spanker rigging was lying there too.

Q. When did they get the spanker mast out of the wreck?

A. I don't know. The mast was lying on the wharf on Saturday and the rigging.

Q. When did you first see the light boxes on the wharf?

A. Yesterday, I think I was down there and saw them.

Q. The starboard light ought to be in the box; it is slipped on a tongue.

A. It might have been broken or thrown out of her; I don't know, and I did not ask anything about it.

Q. It might have been broken in taking out the mast? A. Yes.

Q. There was nothing in the collision to break the starboard light, was there? A. No.

Q. The steamer struck away up on the bow?

A. Yes.

Q. When did you last make sure that the lights were burning on the vessel?

A. About a quarter of an hour or ten minutes before the steamer struck us.

Q. It was necessary to look over the sides to see, was it?

A. No; by lying against the rails I could see the lights from the poop I could see. I went from one side to the other and saw that they were burning good.

Q. That was a part of your ordinary duty, or was there any special occasion in going and looking at them?

A. I saw the steamer headed for us and I wished to see that there was nothing wrong with the lights.

Q. This was after you got your glasses?

A. Yes.

Q. And you looked at both of the lights?

A. Yes.

Q. Why did you look at the port light?

A. It was supposed to be burning as well as the other; they hardly ever go out; I never knew the lights to go out but once, and a spray put them out that time.

Q. How long after you first saw the "Claudine" did you go and look at the lights to see whether or not they ——— burning? A. Probably ten minutes.

Q. How long before the collision was that?

A. About a quarter of an hour.

Q. How long before the steamer blew her whistle and ported her helm?

A. Ten minutes, or twelve minutes; I could not be exact.

Q. On board of the vessel is there any list of supplies or stores with which the vessel started out?

A. Yes.

Q. Who has charge of that list?

A. The captain generally knows what is there.

Q. Does that list show the number of colored and white lights you were furnished with?

A. Yes. The captain would know how many lights there were.

Q. Is there any list kept?

A. I don't know; the captain cares for that.

Redirect Examination.

(By Mr. NEUMANN.)

Q. Explain to the Court what you mean, what you mean when Mr. Ballou asked you about your starboard light going below the water?

A. It went below the water when the vessel keeled over, of course.

Q. And threw the light in the water? A. Yes.

Q. And put the light out? A. Yes, sure.

Q. When was that with reference to your boarding the "Claudine"—how long after you boarded the steamer, was that?

A. It might have been eight or ten minutes.

Q. That was the last you saw of the starboard light of the "William Carson"? A. Yes.

Q. But you saw it burning before it keeled over?

A. Yes.

(By the COURT.)

Q. Could you see the port light after the starboard light went under the water?

A. I never went over to look at the portlight; I could not see the port light because it was impossible. I could not see it from where I was.

On reading over the testimony, before signing, the witness, F. A. Nelson, desires to make the following cor-

rections; "At the time of testifying I did not remember who put the sidelights out, but afterwards I did remember that McDonald and Campbell put them out. How I remember is, it was in my watch, and the carpenter lit the lights and brought them aft to me on the poop-deck, saying at the time, 'Where is the watch on deck?' then McDonald and Campbell came and took the lights and put them in their places, in the light boxes.

By the COURT.—You saw what was done?

A. I was standing right there.

(By Mr. BALLOU.)

Q. Had the carpenter ever brought them aft before?

A. Not that I remember of; probably once before he took one light and brought it aft, and one of the men took the other. The other man was aloft, doing something—furling sail or something."

The further hearing of this case is continued until two o'clock P. M.

In the United States District Court, Territory of Hawaii.

J. S. LOW et al.
vs.
S. S. "CLAUDINE."

Second day, Nov. 30th, 1900.

Afternoon session.

Mr. NEUMANN.—If your Honor please, I will now read the testimony of Daniel McDonald.

DANIEL McDONALD. being sworn, testified as follows:

(By Mr. NEUMANN.)

Q. State to the Court whether you know the "William Carson" barkentine. A. Yes.

Q. Were you on board of her the 27th of December last? A. Yes.

Q. What is your place on board, your occupation or situation on board the vessel? A. Able seaman.

Q. On December 27th what took place with reference to the vessel?

A. I went to the wheel at eight o'clock and a few minutes after eight I saw a light on the starboard beam, and I could make out that it was a steamer. I saw both lights, red and green, and then I lost sight of the red light, and saw the green light plainly, and then all at once I lost sight of the green light and saw the red light again. The collision took place four or five minutes after.

Q. About five minutes after? A. Yes.

Q. Which light did you see at the time the collision took place? A. The red light.

Q. Where were at the time the collision took place?

A. At the wheel.

Q. When did you take your watch?

A. Eight o'clock.

Q. You had been at the wheel from eight o'clock up to the time of the collision? A. Yes.

Q. Without leaving it? A. Yes.

Q. At what time did the collision take place?

A. About twenty minutes of nine or a quarter of nine.

Q. What course were you steering?

A. Southwest.

Q. When did you begin steering that course?

A. At eight o'clock when I took the helm.

Q. Did you continue that course or shift?

A. Continued that course all of the time. I kept on that course.

Q. Are you familiar with our waters here?

A. No.

Q. On the islands? A. No.

Q. At the time this collision took place can you say how far you were from the port entrance?

A. About ten or twelve miles.

Q. State to the Court what lights you observed at the time you saw the vessel's lights?

A. The Diamond Head light.

Q. The stationary light there?

A. Yes, the stationary light there.

Q. State whether at any time you observed which way the steamer was heading before the collision with reference to your vessel?

A. Steering east by south.

Q. When did you first observe the steamer's headlight? A. A few minutes after eight.

Q. That was some time before the collision took place? A. Yes.

Q. When did you first see the sidelights of the steamer with reference to the time the collision took place?

A. About twenty minutes past eight I saw it was a steamer.

Q. How did you know it was a steamer?

A. I saw her red and green lights out and I saw the masthead long before then, and from that I knew she was a steamer.

Q. Can you tell the Court from what you have said with reference to the sidelights of the steamer in what way she shifted her course, if at all you were heading southwest?

A. Yes. I first saw the steamer coming this way and the bright light first, and when she was closer I saw the red and green lights; I lost sight of the red light and saw the green light and I thought she would clear.

Q. If this is the starboard side of the steamer you saw the green light?

A. For a while, and then I lost sight of it; as she came nearer I lost sight of the green light and saw the red light right off, in a few minutes after I lost sight of the green light.

Q. Where did she strike the vessel?

A. About the fore rigging, between the cathead and the hawse pipe.

Q. How do you know the steamer changed her course as he came nearer to you?

A. By losing sight of the green light and my seeing the red light.

Q. What was the effect of the collision, the immediate effect?

A. She struck the vessel and the vessel immediately commenced to lean over and list to starboard.

Q. What did you do after she struck?

A. We got the boats ready to leave the vessel. The water rushed in.

Q. What effect did the water rushing in have on the "Carson"? A. She keeled over to starboard.

Q. How far did she go over?

A. The starboard light was level with the water.

Q. Where did you go after you got the boats ready?

A. On board the steamer.

Q. Did you use the boat of your own vessel after you got ready?

A. Yes, we got in it, and left our vessel and went aboard the steamer boat.

Q. You went out of your own boat into the steamer's boat, and then went on the steamer? A. Yes.

Q. Did you see the "Carson" at all after you boarded the steamer?

A. Yes, for twenty minutes or half an hour. I could see a green light after we got on board the steamer.

Q. Was not the green light submerged in the water?

A. At last. As soon as she laid over and drowned the light.

Q. What kind of a night was it?

A. It was a sort of a hazy night; you could see the stars here and there, and a few clouds here and there. It was what would be called a dark night.

Q. How was the sea?

A. The sea was pretty smooth only there was a roll or surf on her.

Q. Just before the collision did you at any time hear any signal from the steamer?

A. She blew one whistle.

Q. And who was on the deck at the time you were at the helm?

A. The captain and the second mate and myself.

Q. What did the captain do when the steamer made that maneuver and changed her course?

A. He didn't do anything. I believe he said something, "Where are you going to?" He moved around a little.

Q. At the time the collision took place or when the whistle of the steamer blew what time expired between or before she struck—between the time she gave the signal and the time she struck?

A. Four or five minutes.

Q. Did you at that time see the steamer when she blew her whistle?

A. Yes, we could see her plainly, she had electric lights.

Q. Could you see the whole of the vessel?

A. Yes, I could see the black color; it was plain to be seen.

Cross-Examination.

(By Mr. BALLOU.)

Q. Do you know with how many colored lights the "Carson" was provided?

A. Red and green; one red and one green.

Q. Do you know whether there were any extra lights on board?

A. There were none at the time that I know of.

Q. No spare lights? A. No, not that I see.

Q. Who were the lights in charge of during the daytime? A. The second mate.

Q. Where does he keep them?

A. They are kept in the carpenter shop during the daytime.

Q. Who fills and lights them?

A. The carpenter.

Q. Who puts them in the rigging?

A. Some of the sailors.

Q. What was your last watch before this?

A. Four to six.

Q. Were the lights put in the rigging during that watch? A. Yes; about six o'clock.

Q. Who put them in the rigging?

A. Some sailors; I could not say.

Q. One of your watch? A. I believe so.

Q. Do you think it was one of your watch that put them in the rigging? A. I could not be sure, sir.

On hearing read and before signing his deposition Daniel McDonald makes the following correction:

The lights were put out before six o'clock, before I went below. I think I put out the green light, and Campbell the red light.

By the COURT.—What brought that to your recollection?

A. I was talking about it yesterday, and I came to remember it, that I put out the green light.

Q. Talking about it amongst yourselves?

A. Yes, sir.

Q. After you came on deck at eight o'clock, had you any positive knowledge of the lights burning?

A. No, I did not see them.

Q. You were at the wheel?

A. I heard the captain ask the second mate if the lights were burning properly and he said "yes."

Q. When was that the captain asked the second mate if the lights were burning?

A. That was about a quarter of an hour before the collision, or twenty minutes, when I made out that it was a steamboat.

Q. How long after you first saw the red and green lights of the steamer did the light disappear and you only saw the green—how long was it that you saw both lights?

A. Only for a few minutes when I first saw the steamer a little after eight o'clock.

Q. How long did that condition of affairs keep up where you only saw the green light? Was it until just before the change of course?

A. I saw both red and green first, and then lost sight of the red and I could see the green plainly, and all at once I lost sight of the green and saw the red, and then they blew the whistle.

Q. Just before you lost sight of the green?

A. Yes.

Q. As long as you saw the green light was there any danger of the steamer striking the barkentine?

A. I think not.

Q. You were away aft at the wheel? A. Yes.

Q. If you only saw the green light it was a moral certainty that she would go past?

A. Yes, she would have cleared the vessel if I had continued to see only the green light.

Q. Was you barkentine running free?

A. Running free.

Q. Where was the main and the mizzenmast booms?

A. To starboard.

Q. Were they overhanging the rail?

A. Yes. (Correction Jan. 9, 1900: The booms were not over the rail. They were inside the rail.)

Q. How far?

A. From the yard was square. (Correction Jan. 9, 1900: They were not quite square; they were checked in two points, or a point and a half.)

Q. I am asking about the booms of the main and mizzenmast?

A. They were slacked as far as they would go and running free. (Correction Jan. 9: They were not quite slack.)

Q. Where was the second mate when the captain asked whether or not the lights were burning?

A. Standing alongside aft the rigging.

Q. What did the second mate do when the captain asked him that question?

A. He looked at the light.

Q. Just looked at the starboard light?

A. He looked at both lights.

Q. He went across the ship and looked at both lights?

A. Yes.

Q. For how long had you seen the Diamond Head light?

A. I saw it about eight o'clock, when I first came out. It was a white light.

Q. What color? A. A white light.

Q. Who gave you your course when you took the wheel?

A. One of the men on the other watch. I relieved Mahoney.

(By Mr. NEUMANN.)

Q. Can you say at what speed you were running at the time of the collision?

A. About three knots an hour.

Mr. NEUMANN.—We will now read the testimony of Andrew Young.

ANDREW YOUNG, being sworn duly, testified as follows:

Direct Examination.

(By Mr. NEUMANN.)

Q. Were you on board of the "William Carson" on the 27th of December? A. Yes.

Q. What took place on the evening of that day?

A. We were run down by the steamboat.

Q. What steamer? A. The "Claudine," sir.

Q. Are you familiar with the waters here?

A. No, sir.

Q. Can you say from what you have seen since that time about what spot it was that the collision took place?

A. No, sir.

Q. Can you tell the distance from this port?

A. I think that light was about twelve miles off.

Q. State to the Court what you observed there, what did you see.

A. I was walking the deck and I saw the steamboat shortly after I came on deck, and I saw both lights, and they were making for our stern at right angles, and he ported his helm and blew his whistle and run right into us.

Q. Where did they strike your vessel?

A. On the bow, sir.

Q. Did you observe any other light beside the masthead light? A. Both his lights.

Q. Any other lights outside of those on the steamer?

A. Yes, as soon as he ported helm.

Q. I mean was there any light that you saw on that evening out-side of the lights of the steamer?

A. I saw the shore light.

Q. Whereabouts? A. At right angles to us.

Q. Do you know where Diamond Head is?

A. No, sir.

Q. Do you know where that peaked mountain is standing alone on shore?

A. I have never been here before.

Q. You are sure that the light you saw was not the masthead light? A. No, sir.

Q. Was it a different light from the masthead light?

A. Yes.

Q. In what way was it different?

A. It was fixed light on the shore.

Q. What was the effect of the collision so far as you know?

A. When the steamer struck our vessel it made a noise, and the spar and the yards were all cracking, and I called the captain and ran aft, and the steamer went forward a bit.

Q. What was the effect of the collision?

A. There was a shock.

Q. Did she make a hole in your vessel?

A. Yes, she made a hole in the vessel and the water came in, and the vessel listed to starboard side.

Q. What were you doing on the vessel, were you in the watch on the vessel? A. Yes.

Q. What were your duties?

A. I was walking the deck.

Q. A man who walks the deck has a duty; you were on the lookout? A. No.

Q. But were standing by in case any orders were given? A. Yes.

Q. State to the Court what you know with reference to any sidelights your vessel had?

A. Our own lights were burning bright.

Q. Both the red and the green? A. Yes.

Q. How did you leave the vessel after she was struck and began filling?

A. Lowered the stern boat and I got in the boat, and by the time we got around to starboard the steamboat had put out a boat and we got into the steamboat's boat, and then went aboard the steamboat.

Q. How long were you able to see the lights of the "Carson"? A. Yes, sir.

Q. For how long?

A. As long as I was looking at them; for a few minutes.

Q. After you got on board the steamer could you still see the vessel? A. Yes.

Q. While you were on it? A. Yes.

Q. For how long?

A. Directly I got on the steamboat I saw our vessel was still afloat, and I never looked after that. At that time I could see both lights yet when I left.

Q. What kind of a night was it?

A. It was dark, but the stars were out. You could see the stars over head.

Q. State to the Court what direction, with reference to your course, the steamer was steering before the collision when you saw the masthead light?

A. They were coming fair on to us. I could see his three lights.

Q. The masthead light and the other two lights?

A. Yes, and the green and the red lights.

Q. Did the steamer give any signal?

A. It blew one whistle.

Q. And what was done then at the time she blew the whistle?

A. He ported his helm. I could see his red light.

Q. At that time you could see the red light plainly?

A. Yes.

Q. How long after she ported helm before she struck the "Carson"?

A. As near as I can guess, three or four minutes,

Q. How was the sea?

A. There was not much sea on.

Q. Was it the usual swell?

A. There was a little swell.

Q. It was not rough? A. No.

Q. At the time she blew her whistle and ported her helm where was the captain of your vessel?

A. On the poop, I think.

Q. What did he do?

A. He sung out when he saw the vessel was going to run into us.

Q. Did you hear what he said?

A. I think he said, "Where are you coming to"?

Cross-Examination.

(By Mr. BALLOU.)

Q. How many colored lights has the "Carson" on board of her? A. I could not say.

Q. Has she any spare colored lights?

A. I could not say. The carpenter has charge of the lights.

Q. Who lights them at sunset?

A. The carpenter.

Q. Who puts them in the rigging?

A. The sailors and those watching on deck.

Q. By what watch were they put on that night?

A. When we came on deck at eight o'clock they were on then.

Q. When did you leave the deck before that time, what was the watch before that?

A. It was our watch below until eight o'clock. Our watch on deck was from four to six.

Q. You left the deck at six with the lights in the rigging? A. I am sure that I could not say, sir.

Q. You don't know? A. No, sir.

Q. Do you remember how dark it was— was it sunset when you left at six? A. I could not say.

Q. You don't remember whether it was dark at six or not? A. No.

Q. Did you put the lights in the rigging that night?

A. No.

Q. Do you think the lights were put in by your watch from four to six? A. I forget now, sir.

Q. You cannot tell? A. No, sir.

Q. Is there one man in each particular watch who does that generally, or the carpenter?

A. The carpenter puts them out of the door and we pick them up one on each side, generally.

Q. That is the business of any one directed to do it?

A. Yes, sir.

Q. Of nobody in particular?

A. No, of nobody in particular.

Q. Just before the steamer blew her whistle and ported her helm did you see both or only one light?

A. I saw both lights.

Q. You saw both lights from the time you saw the first light until the helm was ported?

A. Yes.

Q. And the green was shut off and you saw the red?

A. Yes.

Q. As long as you saw both lights she was headed for your vessel? A. Yes.

Q. For which part of the vessel?

A. About midships.

Q. Was there anything done about it, anything done on board the "Carson"? A. No.

Q. Just awaited events? A. Yes.

Q. What did you do between the time they ported their helm and the time they struck your vessel?

A. I was walking the deck, watching the steamship.

Q. There was nothing to do, you did nothing?

A. Only to look at the steamboat coming on to us.

Redirect Examination.

(By Mr. NEUMANN.)

Q. Just before the steamer blew did you observe the steamer? A. Yes, I could see her plainly.

Q. Could you tell the color of her hull?

A. I know now that it was black.

Q. I am asking you whether you could tell the color of her hull when you observed her before the whistle blew?

A. Yes, I could tell by all of the lights she had.

Q. You could see? A. Yes.

Q. You could see the form of the hull? A. Yes.

Q. And her lines? A. Yes.

Mr. NEUMANN.—We will next read the testimony of Alexander Campbell.

ALEXANDER CAMPBELL, being duly sworn, testified as follows:

Direct Examination.

(By Mr. NEUMANN.)

Q. Were you on board of the "William Carson" on the 27th of December, 1899? A. Yes.

Q. Where was she at the time the collision occurred between she and the "Claudine"?

A. She was about fourteen or fifteen miles out.

Q. Outside of the harbor here? A. Yes.

Q. What happened there—first, where did you ship?

A. From Newcastle.

Q. In what capacity? A. As an able seaman.

Q. Are you familiar with these waters here?

A. No.

Q. State to the Court exactly what happened—at what hour did this collision take place?

A. About twenty minutes to nine.

Q. State to the Court what happened.

A. I was on the forecastle head at the time the "Claudine" struck her.

Q. What were you doing there?

A. On the lookout.

Q. In keeping that lookout when did you first see the "Claudine"? A. At eight o'clock.

Q. What did you see then?

A. I saw a bright light.

Q. Was it a masthead light? A. Yes.

Q. What else of the steamer did you see, how was she coming towards your vessel?

A. I saw her green light after that.

Q. What else?

A. When she shifted her course I saw her red light.

Q. How do you know that she shifted her course, from her change of lights, from shutting out one light and showing another?

A. Before she struck us she changed.

Q. How do you know she shifted her helm?

A. I was looking.

Q. You didn't see the man at the wheel?

A. No.

Q. How do you know she shifted her head—was it through the change of lights?

A. I saw the red light before she struck us.

Q. You saw the red light when she struck your vessel? A. Yes.

Q. Where did she strike your vessel?

A. Forward of the cathead, starboard bow.

Q. Who was on deck at the time the collision took place?

A. I was on the starboard watch; there was Young and McDonald and myself.

Q. And who else, if anyone?

A. The second mate Nelson.

Q. Where was the captain? A. I don't know.

By the COURT.—Do you know whether or not he was on deck?

A. I don't know whether or not he was on deck.

Mr. NEUMANN.—How did you go away from the vessel after the collision?

A. Went on board of the steamer.

Q. Did you swim over there?

A. No; jumped from the gangway of the "William Carson."

Q. Were there any lights on your vessel?

A. Yes, the lights were burning.

Q. Which lights?

A. Both lights, the red and the green.

Q. What was the result of the collision after the "Carson" was struck by the "Claudine"?

A. She went over.

Q. Which way? A. Starboard.

Q. Keeled over to starboard?

A. Yes; the last I saw of her she was on her beam ends when I saw her.

Q. Where were you when you last saw her?

A. I was on board of the steamer; I could see her from there. I could see her after I got on board; I paid no more attention to her; I could see her hull.

Q. You can't say whether you saw her hull?

A. No.

Cross-Examination.

(By Mr. BALLOU.)

Q. How do you know the lights were burning from eight o'clock until the ship was struck?

A. I was looking at the lights.

Q Could you see them from your position?

A. Yes.

Q. Here in the forecastle? A. Yes.

Q. And the lights back here?

A. Yes, on port.

Q. Can you see them from the bow?

A. I was walking across.

Q. Walking across so far as you could see the lights?

A. Yes.

Q. From the time you first saw the "Claudine" and saw both lights until the time she ported her helm, could you see both lights all of the time?

A. I could see the masthead light and the red light.

Q. From the time you first saw the "Claudine" up to the time she ported her helm and blew her whistle, between those times what lights did you see on the "Claudine"? A. I could see the masthead light.

Q. Any other light?

A. And I could see the lights on board—the saloon lights.

Q. How about the signal lights—did you see her red or green light?

A. I saw her light before she struck.

Q. Before she ported her helm and blew her whistle you saw the red light?

A. I first saw the green light.

Q. Then did you see any other light?

A. I could see the masthead light and the green light. I could not see the red light then.

Q. When did you first see the red light?

A. About two or three minutes before she struck us.

Q. In that time she ported her helm and shut out the green light? A. Yes.

Q. That was the first that you saw of the red light?

A. Yes.

Q. From the time you first saw the "Claudine" until she ported her helm there never was a time that you could see both lights at the same time? A. No.

Q. Do you know whether there were any spare lights on board the "William Carson"?

A. No, I don't know.

Q. Who has charge of the lights?

A. The carpenter.

Q. Who fills the lamps and lights them at sunset?

A. The carpenter.

Q. What does he do with them when he fills and lights them? A. We carry them aft.

Q. Where does the carpenter usually leave them?

A. In the house, the carpenter shop, and somebody takes them and puts them out.

Q. Who put them out that night?

A. Some of the port watch.

Q. When were you on deck last before eight o'clock?

A. I went on deck at eight o'clock.

Q. Before that what was your watch?

A. I went below at four o'clock; it might have been after four, between four and five o'clock.

Q. And were on board between four and five and eight o'clock? A. Yes.

Q. Don't you stand dog watches? A. Yes.

Q. At four o'clock in the after what watch comes on?

A. Port watch, and it stays on for two hours, from four to six, and six to eight.

Q. Which watch kept from four to six that night?

A. The starboard watch.

Q. That is your watch? A. Yes.

Q. You did not go below at four o'clock, did you?

A. No.

Q. You were on deck from four to six?

A. Yes.

Q. Was it sunset when you went below at six o'clock?

A. Yes, it was sunset.

Q. Why were your lights not out?

A. I don't know what time the lights were put out.

Q. Do you know whether they were put in the rigging from four to six or not?

A. I don't know. The lights were there at eight o'clock.

Q. But you don't know who put them out?

A. No.

Mr. McCLANAHAN.—There are some other depositions made by these same seamen, further depositions; it is part of our case, and I think it would make it more intelligible if we were to read them now and before our case comes up; it is part of our case.

The COURT.—I think we better take up your side of the case alone. I think we better get through with the libelant's case, and then we will take hold of the libelee's case.

Mr. McCLANAHAN.—These men were examined in two or three days after they gave this evidence.

The COURT.—But the better way would be to get through with the libelant's case, and then take hold of

yours. Let it take the ordinary course. Let the libelant get through with his case, then we will take up your case. The Court will not direct the libelant how to present his case.

Mr. NEUMANN.—Will read the testimony of Captain John Piltz, which is as follows:

Testimony of JOHN PILTZ.

(By Mr. NEUMANN.)

Q. What is your occupation, Mr. Piltz?

A. Master.

Q. Master mariner? A. Yes.

Q. Have you been in any way connected with the barkentine "William Carson," that was wrecked here?

A. I was master of the vessel at the time of the collision.

Q. State to the Court the owners of that vessel.

Mr. McCLANAHAN.—We object to the question unless counsel intends to show ownership by some other means—by a bill of sale or register of the vessel.

Mr. NEUMANN.—The register of the vessel has gone down with her, if the Court please.

The COURT.—I think if the captain knows he may answer.

Mr. NEUMANN.—Do you know who the owners of the vessel are? A. Yes.

Q. Name them and their interests to the Court.

A. George U. Hind, two thirty-seconds; C. A. Spreckles, four thirty-seconds; Rudolph Spreckles, four thirty-seconds; George Wempe, four thirty-seconds; William

Carson, two thirty-seconds; H. D. Bendixen, two thirty-seconds; James A. Nelson, two thirty-seconds.

Q. Is it James H. Nelson or James A. Nelson?

A. James A. Nelson; Martin Siversen, two thirty-seconds; F. O. Johansen, two thirty-seconds; H. J. McCloud, one thirty-second; George A. Nelson, one thirty-second; Captain J. M. Fagerlund, one thirty-second; J. S. Hellingsen, one thirty-second; Henry Wetherbee, one thirty-second; myself, two thirty-seconds. I think that is all.

Q. Those were the owners of the vessel at the time of the collision? A. Yes, sir.

Q. Describe to the Court the kind of a vessel that was.

A. She was a four-mast barkentine, square-rigged, three schooner masts.

Q. She was four mast? A. Yes, sir.

Q. All masts except the foremast were fore and aft?

A. Yes, sir.

Q. Was the vessel inspected before she started on her voyage?

A. Yes; that was her first voyage; she started from Eureka.

Q. Was the vessel inspected?

A. She was inspected at Port Blake.

Q. Where is the certificate of inspection?

A. I have it in my possession.

Q. Is the one issued to you, I am speaking of the one issued to the vessel? A. It is aboard the ship.

Q. Under the water now? A. Yes, sir.

Q. Have you a copy of the certificate of inspection?

A. I have a certified copy.

Q. Produce it.

Mr. McCLANAHAN.—We object to it on the ground that it is not in proper form.

The COURT.—The certificate of inspection itself or the certificate, that it is a true copy?

Mr. McCLANAHAN.—The certificate, that it is a true copy, is made by the man that signed it.

The COURT.—I don't, ——— as there is anything that will allow that to be introduced in itself, but if the captain can swear that is the signature of the inspector—

Mr. NEUMANN.—That is just what he will do.

Q. Whose signature are those in red ink?

A. Inspectors' signatures.

Q. Do you know the gentlemen? A. Yes.

Q. Do you know the signature? A. Yes.

Q. From whom did you get this?

A. I sent to the custom-house at Seattle and this was sent back to me.

The COURT.—Do you withdraw your objection?

Mr. McCLANAHAN.—I do.

Q. Can you say to the Court what this purports to be (meaning the signature)?

(Objected to as incompetent, irrelevant, and immaterial. Objection sustained.)

Q. What is this? A. Certificate of inspection.

Q. You mean a copy, do you not? A. Yes.

(Plaintiff here offered in evidence copy of certificate of inspection as identified by witness.)

The COURT.—No objection being made, it is received in evidence and marked Exhibit "A."

The COURT.—That is the one that has been introduced?

Mr. NEUMANN.—That is Exhibit One in this case.

Q. Your vessel was inspected there by this gentleman? A. Yes, sir.

Q. Was anything said about the lights at the time of the inspection?

A. No, it was said that the lights were in the right place.

Q. Who said they were in the right place?

A. They inspected the sidelight boards and places where the lights were.

Q. Where were your lights placed on that vessel?

A. In the spanker rigging.

Q. The spanker is the hindmost mast?

A. Yes, aftermast.

Q. At what height were those lights placed on board of the vessel at all times from the deck?

A. They were about eight feet above the main rail.

Q. At what height was the rail over the main deck?

A. About five feet.

Q. So the entire height at which those lights were placed was about thirteen feet? A. Yes.

Q. How were they placed and carried during your voyage?

A. They were placed so that they could be seen right ahead, two points from the beam.

The COURT.—I would like to have you, if you can, point out the angle that means two points?

Mr. NEUMANN.—It is straight ahead and two points abaft the beam. It is about this way (showing). Your Honor will observe that this is made a purpose to stick out so that the light shall not shine over on to the other side.

The COURT.—So that a man on the port side cannot see the green light?

Mr. NEUMANN.—So that you cannot see the other lights on the ship.

The COURT.—So that you can't see the green light on the port side of the ship?

Mr. NEUMANN.—You ought not to see it.

The COURT.—It is something wrong if you do see it?

Mr. NEUMANN.—Yes, sir.

Mr. McCLANAHAN.—I will admit that it means two points abaft the beam.

Q. Were there any boards that were in front of those lights so they did not shine across the deck?

A. No, sir.

Q. What? A. Boards?

Q. Yes.

A. There were board screens; it projected about three feet six inches or three feet four.

Q. Was that on each side, both the port and starboard side? A. Yes.

Q. What light did you carry on the port rigging?

A. A white light and green on the starboard rigging.

Mr. NEUMANN.—He means a red light, I think.

The COURT.—The Court will take into consideration that the starboard requires a green light and the port a red light.

Q. On the night in question, on the night of the 27th day of December, were those lights out? A. Yes.

Q. They were put out? A. Yes.

Q. Were they burning on that night? A. Yes.

Q. Who was on the deck at the time of the collision and just before? A. I was on deck and my watch.

Q. Who besides yourself?

A. My second mate, the man at the wheel; McDonald was at the wheel; Nelson was the second mate, and he was on deck, and Young and Campbell—

Q. Do you Nelson's given name?

A. F. A. Nelson; he was the second mate.

Q. And there was McDonald? A. Yes, sir.

Q. What were his duties?

A. He was tending to the wheel.

Q. And Young, what was his given name?

A. A. Young.

Q. What was he doing? A. He was midships.

Q. And Alexander Campbell?

A. On the lookout.

Q. Do you know of any others that were on deck at the time of the collision? A. Not that I know of.

Q. State to the Court how that collision occurred, what happened there.

A. I was sailing through the Molokai Channel, and at eight o'clock I saw Diamond Head Light, and about ten or fifteen minutes after I saw a small white light.

Q. At what time was that?

A. About ten or fifteen minutes later.

Q. Later than what?

A. Past eight; ten or fifteen minutes after eight o'clock.

Q. You saw a small white light? A. Yes.

Q. Do you know where Diamond Head light is?

A. Yes.

Q. How far from that was it when you first saw the light—about what distance?

A. I should judge when I noticed Diamond Head light it was about fifteen miles off.

Q. Diamond Head light? A. Yes.

Q. And about what time did you see the other white light, that was not the Diamond Head light?

A. No.

Q. When you saw that light what else did you see?

A. I saw a red light after a while, and about a minute or so after I saw his green light. We were on a southwest course.

Q. Your course was southwest, you say?

A. Yes.

Q. At what rate were you sailing?

A. Between two and a half and three knots.

Q. When you saw first the red light and then the green light, what conclusion did you come to from seeing those?

A. I came to the conclusion that it was a steamer because she had a masthead light.

Q. And red and green lights? A. Yes.

Q. What did you see after that?

A. After a while I saw him shut off his red light (shutting it off means that it disappeared); for instance, he was going along just about the direction it was going; the green light would be over to port; he would be on this side, was shutting off the red light would bring her bow this way (showing). This (showing) was the red light and here (showing) was her green light. In shutting off the red you will observe that she must make this movement; that turns the red light out of sight and brings the green light into view.

Mr. McCLANAHAN.—I don't like that statement of the counsel that he has just made, when he says shutting off the red light and seeing the green light means that the "Claudine" changed her course that way (showing).

The COURT.—It means that somebody changed the course?

Mr. McCLANAHAN.—Yes, sir.

Q. What became of the green light?

A. We could see his green light.

Q. How long did that continue?

A. When the steamer shut off the green light it was about four or five minutes after one bell.

Q. What light? A. The red light.

Q. You said green light?

A. I said that he shut out his red light about four or five minutes after one bell.

Q. That would be eight forty-five? A. Yes.

Q. Or about five minutes before the collision?

A. Yes.

Q. And what became of the green light?

A. It was visible to us, the steamer's green light.

Q. How long did he keep that up?

A. I could see his green light for three or four minutes, and then he changed the course to starboard and showed the red light.

Q. He shut out the green and showed the red light?

A. Yes.

Q. What else did he do?

A. Then he came towards us and crashed into us.

Q. Did he give any signal?

A. He blew one whistle.

Q. You didn't say that. He blew one whistle?

A. Yes.

Q. What time?

A. When he ported the helm and changed the course starboard about a minute or two before the collision.

Q. At the same time he shut out the green and showed the red light? A. Yes.

Q. What did you do?

A. I sung out to the steamer.

Q. What did you sing out?

A. I said, "My God! Where are you going—what are you trying to do? Back your boat!"

Q. Did he do so? A. Not that I know of.

Q. If he had given any signal to slow down or back you could have heard it, couldn't you? A. Yes.

Q. Did he give any answer when you sung out to him?

A. No.

Q. He came right ahead? A. Yes.

Q. At about what speed?

A. It looked to me like he was going about ten or eleven miles an hour.

Q. How long after he sounded that single whistle was it that he struck your vessel?

A. About a minute or two.

Q. What did you do—did you keep on your course or did you alter it? A. Kept right on my course.

Q. When he shifted the helm or ported his helm, what was there left for you to do, what could you do to avoid the collision?

A. I could not do anything the way he was coming. The wind was too light.

Q. At any rate, you did not do anything, but you kept right on your course?

A. Yes, I kept right on my course.

Q. And there was no other signal given except that one blast of the whistle? A. Yes.

Q. Could discern anyone on the bridge of the "Claudine"? A. No, sir.

Q. Could you see the outline of the "Claudine"?

A. I saw the whole ship before he ported the helm.

Q. What would have been the consequence if he had kept straight on and not ported the helm?

A. He would have gone by our stern.

Q. Can you explain to the Court what he meant to do there? Can it be explained when he ported his helm?

A. No, I cannot explain it; I don't know why the man ported his helm.

Q. What map is this, Captain? I wish you would state who made this map.

A. It was made by a gentleman in town.

Q. Does this map show about the situation of the steamer and your vessel? A. Yes.

Q. And the points of the compass, are they correct?

A. Yes.

Q. And is this description correct?

A. Yes, sir.

(Plaintiff offers the map in evidence as testified to by witness.)

The COURT.—Where is the map—was the map introduced?

Mr. NEUMANN.—Yes, but not admitted.

Mr. McCLANAHAN.—We object to the map being offered in evidence. It attempts to show the course of the "Claudine," and there is absolutely no evidence here to show that was her course. As evidence in this case the map is absolutely irrelevant.

The COURT.—I think the map is inadmissible at this stage of the case.

Mr. NEUMANN.—Who made this map?

A. I cannot tell you the name of the gentleman now; he only laid down the islands, I guess, and drew the degrees.

Q. Who made those illustrations on the map called

"Track of the Steamship 'Claudine'" and "Track of the 'William Carson'"? A. I did myself.

Q. You laid down the track of the barkentine "William Carson"? A. Yes.

Q. Is the track laid down on this map a southwest track? A. Yes, a southwest track.

Q. According to the bearings? A. Yes.

Q. As to the track of the "Claudine" laid down here by you, as a matter of fact, that I presume was guessed at by you? A. To the best of my knowledge.

Q. You can be certain of your course? A. Yes.

Q. Was the course that you steered magnetic?

A. Yes.

.Q Southwest? A. Yes.

Q. And the steamer approached you in about the direction you have laid down on this map? A. Yes.

Q. At the time when this collision took place how was your vessel manned? Did you have a sufficient crew on her? A. Yes.

The COURT.—I would like to see that map.

Mr. NEUMANN.—I have got it.

The COURT.—It is testimony, so far as the ship is concerned; it may not be testimony so far as the "Claudine," but so far as the ship is concerned.

Mr. NEUMANN.—There is a dispute between Mr. McClanahan and ourselves. I claim that the man at the helm and the captain are sufficient to prove that that was their course.

The COURT.—You will please bring that map, because that map is testimony so far as the "Carson" is concerned. I would rule it out so far as the course of the "Claudine" is concerned; I don't think it proves anything so far as she is concerned.

Q. And at the time of the collision was your crew distributed over the vessel—the watch? A. Yes.

Q. State to the Court how you were disposed of on your vessel?

A. There was a man at the wheel, McDonald; I was walking on the quarter-deck and the second mate on the poop-deck, and Young amidships, and Campbell under the gallant forecastle.

Q. You said the lookout was Campbell?

A. Yes.

Q. Did you see your own lights that night?

A. Yes.

Q. When did you last see them before the collision took place?

A. Just when the light went into the water (that is, after she sank).

Q. Explain that to the Court.

A. When she fell over on her starboard side, and the light got into the water.

Q. How did she come to fall on her starboard side?

A. By filling with water by reason of the collision and the hole in the bow.

Q. The collision *cause* a hole in the bow and the water run in through that? A. Yes.

Q. How did you and the rest of the party on the "William Carson" get off of the "Carson"?

A. Lowered a boat on the starboard and got into her quick.

Q. Where did you go to?

A. Pulled for the starboard of the ship because the ship was sinking.

Q. How many of you were in that boat?

A. There were ten of us at first, and the steamer sent a boat to our assistance, and some of us got into the steamer boat. I went into the steamer's boat and we all went to the starboard of the ship.

Q. From there where did you go?

A. After the ship rolled over on her side we went over to the steamer.

Q. Describe how she rolled over from the time the "Claudine" struck her.

A. She run full of water and rolled over to starboard side.

Q. Did the whole starboard side become submerged?

A. Yes.

Q. That was when you last saw the light?

A. Yes.

Q. Was it then burning?

A. Yes; just the last length of it when it struck the water.

Q. What boat was it that struck and sank her?

A. The "Claudine."

Q. Did you come into shore on the "Claudine"?

A. Yes.

Q. What became of the vessel after she was submerged as you have described, where is she now?

A. She is sunk in about ten fathoms of water.

Q. Were any efforts made to save her?

A. I tried to tow her in from where she was sunk.

Q. She sunk in about ten fathoms of water?

A. Yes.

Q. No chance of saving the vessel? A. No.

Q. Did anyone else make any attempt to save it?

A. The Wilder Steamship Company.

Q. Can you tell the Court how far they succeeded?

A. No, that I don't know.

Q. Did they take charge of the whole of it?

A. Yes.

Q. Was there any attempt made to bring the vessel into port? A. We could not get her in.

Q. Was any attempt made to get her in? You understand what I mean? A. I didn't.

Q. Was there any effort made to bring her in?

A. I went out the next day after the collision with the Government tug and got a line fastened to her.

Q. What did you do then?

A. We brought her into shallow water.

Q. Did that effort succeed? A. No.

Q. What became of the vessel and the cargo subsequently? A. She sunk and she is now sunk.

Q. Was she sold?

A. Yes, she was sold by the Court.

Q. By order of this Court? A. Yes.

Q. And she is still under water, for all you know of her? A. Yes, still under water.

Q. State to the Court what lights, if any, you carried at any time at night on board of your vessel.

A. Red and green lights.

Q. Did you carry any others? A. No.

Q. You have said already that the red and green lights were fastened to the spanker rigging?

A. Yes.

Q. On board of a vessel of the class to which your ship belonged where is the best place to carry the lights?

A. On the spanker rigging.

Q. Do other vessels of the same class carry their lights there? A. Yes.

Mr. NEUMANN.—I now wish to introduce in evidence this photograph and also this photograph.

Mr. McCLANAHAN.—I object to the introduction of those photographs.

Mr. NEUMANN.—All right; I will not introduce them yet.

Q. Captain, what is this? A. It is a picture.

Q. It is a photograph of what?

A. Of a barkentine, a four-mast barkentine.

Q. What is the name of the barkentine?

A. The "Argonaut."

Q. Was that picture taken in the port of Honolulu?

A. Yes.

Q. What is this?

A. A bark; her name is the "Arnold."

Q. Was that taken in the port here? A. Yes.

Q. Were you present when those pictures were taken? A. Yes.

Q. Were they made by your orders? A. Yes.

Q. Take them up to the Court and point out to the Court where the lights are fixed on those vessels.

Mr. McCLANAHAN.—We object to that. That has absolutely nothing to do with the "William Carson" case. In one photograph the rigging is entirely different, and it is not shown that the sails and the lines of are in the same place, and the booms, or the vessel's length, and there is no connection whatever to show they are in the same condition as was the "William Carson" at the time the collision took place.

Mr. NEUMANN.—I propose to show that lights on board vessels of that sort are placed just exactly as the captain put the lights on the barkentine "William Carson."

The COURT.—I think in view of the objection that should be shown before the photographs are put in evidence.

Mr. NEUMANN.—I have not put them in evidence yet; all that I have asked is that the witness point out to the Court where the lights on those vessels are carried.

The COURT.—I think that evidence should be shown before you proceed.

Mr. NEUMANN.—Where do vessels of that class, four-mast barkentines, usually carry their lights?

(Objected to as not being proper evidence, the law providing where *lights* shall carry their lights.)

Mr. NEUMANN.—I claim that we can show there is no law that prevents us from carrying the lights elsewhere

on board vessels where they are visible and where they comply with the general law.

The COURT.—I think the identity of the location of the lights should be shown by an identity of ships.

Mr. NEUMANN.—Captain, you have there the "Arnold"; how is she built with reference to your vessel?

A. She has one more square mast than my ship had.

Q. Which mast? A. The middle mast.

Q. She has two square-rigged masts and the other schooner rigged? A. Yes.

Q. Otherwise is she built like your ship?

A. No, she is a different vessel.

Q. Different in what way?

A. She is more straight.

Q. In her lines? A. Yes.

Q. You say you carry your lights on the spanker rigging? A. Yes, sir.

Q. How were those lights fixed there?

A. They were fastened on to shrouds and the screens were fastened on to the shrouds.

Q. In being fixed that way how does the light show?

A. They show from right ahead to two points aft the beam.

Q. And in what arc of light? A. Ten points.

Q. Can you say to the Court at what distance such lights are visible on a clear night?

A. That all depends on the height of the light.

Q. Say the height at which your lights were placed on the "Carson"?

A. You can see them two miles—our lights.

Q. After you left the west coast of the United States where did you travel? A. Toward Australia.

Q. Sailing there in the ports? A. Yes.

Q. Meeting steamers? A. Yes, sir.

Q. At night? A. Yes.

Q. Any trouble about your lights being seen?

A. Not that I ever heard of.

Q. No collisions? A. No.

Q. Did you travel there on such nights as you had here on the night of the collision? A. Yes, sir.

Q. On nights like that?

A. Yes, and on dark nights.

Q. You never had any difficulty with reference to those lights—except at a time when the second mate of the "Claudine" ported the helm of his vessel?

A. No.

Q. State to the Court at the time when this signal was given by the "Claudine" did you understand what it meant? A. Yes.

Q. What did that signal mean, one whistle?

A. It means that he was directing his course to starboard.

The COURT.—The statute expressly provides a difference. It is not a signal between steamers and sailing vessels. If a steamer was sailing along and should give one signal, it would be no signal at all to a sailing vessel, it would be a signal to a steamer.

Mr. McCLANAHAN.—This man says that he understood what the signal was.

The COURT.—A sailing vessel cannot get away and a steamer can.

Mr. McCLANAHAN.—Q. And therefore would pass you where—on the starboard or port side?

A. On the starboard side—that is, had he continued.

Q. Supposing the "Claudine" had continued to carry her green light toward you as it was when you first met and before the collision, would there have been any danger of a collision? A. No, sir.

Q. Was there any fog that night? A. No.

Q. State to the Court what of the vessel you saw before the signal was given?

A. I saw the whole hull of the ship and even saw a gentleman coming out of the door on the starboard side, and he disappeared in the after part of the house.

Q. Could you see anyone on the bridge?

A. No, I did not see anyone on the bridge.

Q. What was the purpose of the "Claudine" when the helm was ported? A. I could not tell you.

Q. Was it, as a matter of fact, in sailing rules admissible at all in the position he was to port his helm?

A. Not that I know of.

Q. You know something about it? Was it admissible that he should port his helm in the position he was in? A. No.

Q. With your green light on his starboard side?

A. No.

Q. Then it was not admissible? A. No.

Q. What was the necessary consequence of porting his helm and showing the red light instead of the green?

A. The consequence was the collision.

Q. I asked what was the necessary consequence of his showing the red light and bringing the light the other way?

A. It was not necessary for him to port his helm at all.

Q. Could he have avoided the collision by doing so?

A. No.

Q. Here is the "Claudine" coming this way.

A. Yes.

Q. Here is your vessel sailing in that way.

A. Yes.

Q. At one time you say he showed his green light?

A. Yes.

Q. Shutting out the red light? A. Yes.

Q. That showed he tacked to starboard?

A. Yes.

Q. He went to starboard? A. Yes.

Q. He brought his green light into your view?

A. Yes; that is right.

Q. Being in that position, if he had gone on in that direction in which he was sailing what would have been the result with regard to the two vessels?

A. They would have gone clear of one another.

Q. Instead of that when he sounded the whistle you say he shut out the green and showed the red light?

A. Yes.

Q. Which must have brought him in this position?

A. Yes.

Q. And a short time afterwards struck you on the starboard bow? A. Yes.

Q. At that time when he struck you which of his lights were visible? A. The red light.

Q. And that was the way he came to strike you?

A. Yes.

Q. What is the value of that vessel?

A. Fifty-five thousand dollars.

Q. What is the value of the cargo or was the value of the cargo at the time of the collision?

A. It was valued at nine thousand five hundred dollars.

Q. Altogether that would have been sixty-four thousand five hundred dollars? A. Yes, sir.

Q. Is there anything else that you wish to state to the Court with reference to that matter?

A. Not that I know of; not just yet.

Q. Why not just yet?

A. There may be other questions coming up.

Q. They will ask you those when they cross-examine you.

Cross-Examination of JOHN PILTZ.

Mr. McCLANAHAN.—How do you know the vessel was worth fifty-five thousand dollars?

A. Because that was the bill.

Q. How do you know that?

A. I saw the statement of the building of the ship which is aboard of the ship.

Q. Who built the ship?

A. The Van Dykes, of California.

Q. Was it built under contract? A. Yes.

Q. What was the contract price?

A. He started it on his own hook and then sold her.

Q. Van Dyke started to build the ship on contract and then sold it before it was finished? A. Yes.

Q. To whom? A. To Hind, Rolfe & Company.

Q. What do you know about that sale by Van Dyke?

A. Because these owners of the ship went in together.

Q. The present owners of the ship?

A. Yes; the owners of the ship before the collision, not the owners of the ship now.

Q. Go on.

A. These owners of the ship bought the interest in the vessel from Hind, Rolfe & Co.

Q. I asked you what you knew about the sale of the ship from Van Dyke to Hind, Rolfe & Co.

A. Through their agreement.

Q. What do you know about the agreement?

A. Because I had it on board and read it.

Q. The agreement by which the ship was sold to Hind, Rolfe & Co.? A. Yes.

Q. And that was on the boat and was lost?

A. No, it is in San Francisco; I didn't see it, but it was sent from Eureka after the ship was launched. I saw it in Eureka; it was there when the ship was finished six weeks.

Q. When was this agreement of sale dated?

A. I could not tell you.

Q. When was the ship finished?

A. It was launched on the 12th of June, 1899.

Q. Was this agreement of sale between Van Dyke and Hind, Rolfe & Company made before or after the launching of the ship? A. Before.

Q. And the ownership passed before she was launched? A. Yes.

Q. What do you know about the agreement you saw?

A. I know the ship was to be built according to contract which she was.

Q. That is not the agreement between Van Dyke and the other men, is it? A. Yes.

Q. What else do you know about it?

A. I know the ship is in first-class order.

Q. I am talking about the agreement of sale other than that the agreement provided the ship should be built according to contract? A. Yes, it did.

Q. What else do you know about the agreement?

A. I don't know anything else about it; everything else was built as agreed to, and she was launched and turned over to the owners.

Q. Van Dykes agreed to build the ship?

A. Yes, for Hind, Rolfe and Company.

Q. For how much money?

A. Fifty-five thousand dollars.

Q. You are sure about that? A. Yes, sir.

Q. Why didn't you mention about that when I asked you about the agreement?

A. I said that a little while before. I said that was the money they got for building the ship ready for sea.

Q. Now, we have the title of the ship in Hind, Rolfe & Company? A. Yes.

Q. How did you people get an interest in it?

A. Because we bought an interest in it, the manager of the ship.

Q. What did you pay for the interest you bought in her?

A. I think I paid very nearly four thousand dollars.

Q. Don't you know what you paid for your interest?

A. Not to a dollar or two.

Q. Why don't you know?

A. Because the ship was fitted with provisions and everything else and I paid toward it.

Q. When the ship was purchased it was purchased, provisioned, for fifty-five thousand dollars?

A. No, without the provisions.

Q. What portion did you pay, for your two thirty-second interest? A. I could not tell you.

Q. What did you pay for the ship provisioned, your two thirty-second interest?

A. Very nearly four thousand dollars.

Q. How near it? A. For my interest.

Q. How near it?

A. Within seventy-five dollars or something, I think.

Q. As close as that? A. Yes, I guess so.

Q. What provisions did you have on the ship that were included in that price?

A. We had provisions enough for the round trip and more too.

Q. What did they cost?

A. I have not got it in my memory.

The COURT.—That is not testimony in this case, as to what the ship cost; this is an action for the value of the cargo. I do not think we want to go into all of these things.

Mr. McCLANAHAN.—There is not much to it.

The COURT.—The Court will consider nothing but about the cargo.

Q. Did you ever have anything to do with vessels before you got hold of the "William Carson"?

A. Yes.

Q. Provisioning vessels? A. Yes.

Q. Of this size ships? A. Yes, sir.

Q. Don't you know what it costs?

A. I can tell pretty near. With some it would be a little more and with some a little less; there might be probably a thousand dollars one trip and twelve hundred the next trip or eight hundred dollars one trip; it all depends on the vessel.

Q. Did the provisioning of this vessel cost over two thousand dollars? A. About that, I think.

Q. About two thousand dollars? A. Yes.

Q. Did the other men buy their interest at the same price you bought yours? A. I don't know that.

Q. You are quite sure you saw the bill of sale for this vessel, for fifty-five thousand dollars? A. Yes.

Q. Was there any change made in the vessel after she was purchased? A. Not that I know of.

Q. What do you know about the cargo and its value? On what do you base the statement that the cargo was worth nine thousand five hundred dollars?

A. Well, according to the statement of Mr. Rolfe.

Q. You don't know anything about it except what some one else said?

A. The ship was chartered for that cargo of coal for so much.

Q. What do you mean by that?

A. She was chartered to some parties in San Francisco to go to Newcastle and load coal for Honolulu.

Q. What has that to do with the value of the coal? All you know about the value of the coal is what you have heard somebody else say? A. Yes.

Mr. McCLANAHAN.—We move to strike out the evidence of the witness with regard to the value of the coal, on the ground that it is hearsay.

The COURT.—Motion granted.

Q. How long have you been following the sea?

A. Eighteen years.

Q. What position have you held. A. Master.

Q. For eighteen years? A. Yes.

Q. What kind of boats have you sailed?

A. I have sailed schooner and barkentines.

Q. Four-masted barkentines? A. Yes.

Q. What ones before the "William Carson"?

A. The "Charles F. Crocker."

Q. Four masts? A. Yes.

Q. When did you sail her?

A. Just before I took charge of this vessel.

Q. What year?

A. I sailed her in 1897, 1898 and 1896.

Q. Is she afloat now? A. Yes.

Q. How many tons? A. Seven sixty-two tons.

Q. Square-rigged? A. Yes.

Q. Fore and aft sails behind? A. Yes.

Q. The same kind of a boat as the "William Carson?"

A. Yes.

Q. And in what masts did you have her sidelights?

A. In the spanker rigging.

Q. How high above the deck?

A. About eight feet above the rail.

Q. About the same height as the lights on the "William Carson"? A. Yes.

Q. How high above the deck?

A. twelve or thirteen feet.

Q. Were the *owner* of this ship the "Crocker"?

A. I was part owner.

Q. Are you still a part owner? A. No.

Q. Did you ever have a collision with her?

A. No.

Q. Is that the only barkentine that you ever sailed aside from the "William Carson"? A. Yes, sir.

Q. Did you ever sail a bark? A. No.

Q. All of your other vessels have been schooners?

A. Yes.

Q. Where do carry the lights on schooners?

A. Sometimes aft on the quarter.

Q. Where else?

A. Sometimes in the fore rigging.

Q. Why did you carry them in the fore rigging?

A. For running down. When the ship is light it

would be more out of the water aft; if it is lower you can't have the lights there.

Q. You can't have the lights fore when the ship is loaded?

A. Yes, you can have them forward when the ship was loaded.

Q. You have had these lights fore and aft on schooners? A. Yes, sir.

Q. When you had them down on the rail, how high were they above the deck?

A. About six or seven feet.

Q. Why is the rail of a schooner so much higher than on a barkentine?

A. The rail is not; I am talking about the deck. You asked how high I had the lights on the deck of the schooners.

Q. You had them in the rigging?

A. No; right aft the quarter.

Q. Is not the quarter a part of the rail?

A. No; there is another rail on top—on top of the quarter.

Q. It was on the quarter that you had the sidelights on the schooners? A. Yes, sir.

Q. How high was that above the deck?

A. About six feet.

Q. The quarter above the deck on the schooner is higher than the rail on a barkentine? A. No.

Q. You said five feet on barkentines?

A. You see there is a break in those schooners, there

is a break of four or five feet and there is a chock on top of that.

Q. You say there is a chock on top of the deck?

A. On top of the quarter-deck.

Q. Is there not one on top of the house deck?

A. No.

Q. You are speaking of schooners now?

A. Yes.

Q. Explain the difference between the height of rails on schooner and on barkentines.

A. On a barkentine the rail would be a little higher than on a schooner; on small schooners the rail is low and it is higher on large schooners.

Q. We are talking about schooners of the same size of the "William Carson."

A. That would be about the same.

Q. That would be the height of the quarter?

A. Yes.

Q. The lights on the schooners when carried aft in the quarter were not in the rigging?

A. No, they were right on the side of the boat.

Q. Did you ever find a master or did you yourself as a master of a boat ever change the lights from fore to aft or aft to fore? A. No.

Q. Not on the same boat? A. No.

Q. When the lights are once fixed you carry them there? A. Yes, for the night.

Q. I am not speaking about one night; I am speaking of one trip or at any time during your management of the ship. A. I have changed them.

Q. Why?

A. Because in the forerigging, higher up; when I thought it was foggy or misty or anything of the kind I would change them from aft to fore.

Q. And you would do that in order to show the lights clearly?

A. Yes, sometimes because we could have them higher up in the fore rigging in a schooner.

Q. They could be seen better?

A. Yes, the light being so much higher up, about sixteen or seventeen feet above the deck.

Q. You made the change because they could be seen better? A. Yes, they could carry them higher.

Q. Didn't you ever make the change except in foggy weather?

A. No, in foggy weather we have changed them when it was foggy or raining.

Q. Why didn't you lift up on the rigging of the mizzenmast?

A. Because we didn't have any screens.

Q. Did you have screens placed forward?

A. Yes.

Q. Is that customary to have screens fore and aft on schooners? A. Some have them on both ends.

Q. You carry them either place? A. Yes.

Q. Did the "William Carson" have screens at both ends? A. No.

Q. Do you remember of any other barkentine that has been in the harbor since you have been here?

A. Yes.

Q. Name them. A. Here is one.

Q. Any others?

A. There are two more here now; one was the "Argo" and the other was the "Addenda."

Q. Four masts? A. Yes.

Q. Square-rigged?

A. And the barkentine "Echo" and the "W. H. Diamond."

Q. Do you remember of any others—the "Stanford"?

A. Yes, the "Stanford" has been here.

Q. Is she about the same size as your boat?

A. She is a larger boat.

Q. Rigged in the same way? A. Yes.

Q. Where were her lights?

A. In the fore deck, I think.

Q. Have you not been looking at lights on barkentines? A. Yes, sir.

Q. Where was the "Stanford" light when you looked for it? A. In the fore rigging, I think.

Q. You did not take any photograph of it?

A. No.

Q. Whereabouts in the fore rigging were the "Stanford" lights?

A. I did not go and take particular notice.

Q. That did not suit your idea of the case?

A. I could go on board of the ship; Captain Johnston was on the vessel; very often I go.

Q. When did you measure your inboard screens?

A. Here.

Q. What was the length of them?

A. The length three foot six inches on the fore part and three feet four.

Q. Can you tell the Court just how the lamps were placed in these screen boxes? A. Yes.

Q. Tell the Court about it.

A. There is a machine put on the sidelight boards screwed on a sort of tongue and then there is a socket on the back of the sidelight; there is a tongue put on the sidelight and screwed on to the sidelight, and the socket in the back of the sidelight goes over the tongue, and then there is a bale in the head of the sidelight.

Q. Explain to the Court what a bale is.

A. It is a bale or an iron concern that goes into two little pivots into the head of the sidelight.

Q. A sort of an iron hook? A. Yes.

Q. A ring? A. An iron ring; it is a bale.

Q. What do you do with the bale?

A. There is a lanyard here and it is taken around the shroud and through this bale and tied fast to the shroud directly.

Q. That is the way the lights were fastened in the screen? A. Yes.

Q. How do you know they are fastened in that way?

A. Because it is the usual custom.

Q. On your ship? A. On all ships.

Q. On your ship? A. Yes.

Q. Did you ever examine the lights on the "William Carson" to see if they were fastened in that way?

A. Yes.

Q. Did you examine them on the night of the collision to see whether or not they were fastened in that way?

A. No.

Q. When had you before the collision examined the lights to see that the lights were fastened properly in the box?

A. I had told and had seen the lights in the ship; I could not say when.

Q. On this trip had you? A. Yes.

Q. After leaving Australia? A. Yes.

Q. Whose duty was it to fasten them in that way?

A. The man, the sailor.

Q. What man?

A. Whoever had to fasten the lights when they were put out.

Q. Any particular man? A. No.

Q. Did you ever give instructions to any one man?

A. Yes.

Q. Who.

A. To the man that happened to be putting the lights out at that time. I have instructed Nelson.

Q. The second mate?

A. No, another Nelson—Oscar Nelson.

Q. Who else did you instruct?

A. Some other of the crew; I don't exactly who.

Q. What was the occasion of having to instruct Oscar Nelson?

A. Because he was a young man and just learning to be a sailor, and when I thought he needed advice I gave it to him.

Q. You thought he needed advice in the matter of fastening the lights in the box? A. Yes, sir.

Q. How long before the collision was that—a few days or weeks?

A. Once or twice during the voyage.

Q. You instructed him once or twice?

A. Yes, sir.

Q. Was he not the man that put the lights in that night? A. No; McDonald.

Q. Who was the man? A. McDonald.

Q. McDonald was the fellow at the wheel?

A. Yes; at the time of the collision he was at the wheel.

Q. How do you know that McDonald put the lights out? A. Because I was near.

Q. When he did it? A. Yes.

Q. He put the starboard and port lights out himself?

A. He put the starboard light out.

Q. You saw him do that? A. Yes.

Q. Where were you at the time?

A. On the quarter-deck.

Q. What hours was it?

A. About quarter after six in the evening.

Q. Whose watch was it? A. My watch.

Q. McDonald was on that watch? A. Yes.

Q. Where did he get the light?

A. I could not tell you.

Q. You did not see him get the light?

A. I saw him take the light and put it on the poop-

deck and he brought it and stepped on the rail, and put the light in the box.

Q. Did you see him do that? A. Yes.

Q. Did you see him put it in? A. Yes.

Q. How did he reach the inboard screen?

A. He stepped on the shear pole, which is an iron bar lashed on the outside from one dead light to the other.

Q. You mean from one dead eye to the other?

A. Yes.

Q. This iron bar runs across the rigging?

A. Yes.

Q. And keeps it in position? A. Yes.

Q. And he stepped on that and he could reach the box?

A. Yes, it was just about abreast of his stomach.

Q. It was necessary to step on that to reach it?

A. Yes.

Q. How about the port light?

A. Campbell put that out, because I saw him.

Q. At the same time you saw McDonald?

A. Yes.

Q. Did you see him step up on the iron bar?

A. Yes.

Q. And saw him fasten that light in? A. Yes.

Q. You swear to that?

A. Yes, I will swear to that, I am under oath.

Q. Who *light* the lights when they were put in there?

A. The carpenter.

Q. The carpenter lit the lights after they were put in there? A. Yes.

Q. Did you see the carpenter light the lights?

A. No.

Q. How do you know that he did?

A. He generally lights them inside of the carpenter shop.

Q. How do you know that he lit the lights that night?

A. Because it is his place and his orders to light them.

Q. And that is the only reason that you have for saying that he lit them that night?

A. He always lights them; it is his place to do so.

Q. Were they lit when put in the boxes?

A. Yes.

Q. You were mistaken in saying that the carpenter lit them after they were put in the boxes, that is not correct? A. No.

Q. They were lighted when put in the boxes?

A. Yes.

Q. This was about a quarter past six o'clock?

A. Yes.

Q. Campbell put in the port light? A. Yes.

Q. What kind of a man is Campbell—as a seaman?

A. I think he is all right as a seaman.

Q. How long have you known him?

A. I shipped him in Newcastle, Australia.

Q. Did he seem to be a capable man?

A. He seemed to be all right, so far as I know.

Q. What experience had he had as a seaman when you shipped him? A. I could not tell you.

Q. Do you make inquiries? A. No.

Q. Was he as good as any other man on the boat?

A. Yes.

Q. As good a seaman as any other man?

A. Yes.

Q. Did you have to tell Campbell any of his duties?

A. No.

Q. He seemed to know his duties? A. Yes.

Q. Was he on the lookout that night? A. Yes.

Q. Had he ever been lookout before on the barkentine?

A. I don't know; yes, he had on my barkentine.

Q. He had been? A. Yes.

Q. Was his eyesight good?

A. I could not tell you.

Q. Is your eyesight good? A. Yes.

Q. Is McDonald's eyesight good?

A. I guess so.

Q. Is McDonald's as good as Campbell's?

A. Yes.

Q. Young's eyesight good?

A. Yes, so far as I know.

Q. When did you come on deck that night?

A. I came on deck about half-past five in the evening.

Q. How long did you remain on deck?

A. All of the time until the collision.

Q. From half-past five until the collision?

A. Yes.

Q. What makes you think that it was about eight o'clock when you saw this light? Did you look at your watch? A. No, I know by the bell striking.

Q. What bell struck at eight o'clock?

A. The clock in the companionway struck eight bells; it is an eight bell strike, and it struck eight bells on deck.

Q. How soon after that was it that you saw the masthead light of the "Claudine"?

A. Between ten and fifteen minutes.

Q. Did you see it as quickly as the other men on your boat?

A. No, I think the light was reported from the lookout, reported aft.

Q. To whom was the report?

A. To the man in charge of the ship; me.

Q. Did he report to you this light? A. Yes.

Q. What did you do when he reported the light?

A. I looked to see.

Q. Did you go forward to do it?

A. No, he reported it on the starboard bow, and I looked over the starboard side of the boat and saw it.

Q. And saw the light of the starboard bow of the boat? A. Yes.

Q. Campbell says that was eight o'clock he first saw the light? A. He saw the Diamond Head light?

Q. No, saw the masthead light of the steamer; how about that? A. I don't know.

Q. You did not look at your watch, did you?

A. I looked at the clock. I did not look at the clock but I heard it strike eight bells and I saw the Diamond Head light.

Q. At the time this was reported to by Campbell, this light, to your knowledge, was it seen by anyone else at that time? A. Which light?

Q. I am talking about the light that he reported to you at eight.

A. At the time the head light was reported it was eight o'clock.

Q. By Campbell?

A. No, Campbell just came on.

Q. By whom was it reported?

A. That I could not tell you. I don't know exactly because I saw the Diamond Head light myself. I had seen it already when it was reported.

Q. We are asking about the masthead light of the steamer you said that was reported to you by Campbell.

A. Yes.

Q. Was there anyone else who knew of that light at that time besides you and Campbell?

A. The second mate was there and Young was there. The second mate saw the light.

Q. And Young saw the light?

A. I don't know whether he saw it.

Q. Nelson says that it was a few minutes after eight o'clock that you saw the steamer; is that correct?

A. Yes, that is about correct.

Q. Do you know when Young came on deck that night?

A. He came on deck at eight o'clock.

Q. Is Campbell in town? A. No.

Q. How do you know?

A. I have not seen him or heard of his being here.

Q. Is Nelson in town? A. No.

Q. How do you know?

A. I have not seen or heard of him.

Q. Have you looked for them?

A. I have not seen either of them since they shipped.

Q. Is McDonald in town?

A. No, he shipped; he went to the sound.

Q. Is Young in town?

A. Not that I know of.

Q. Have you made any effort to find those men?

A. I went to the consul's office and found none of them.

Q. When? A. A couple of days ago?

Q. Nelson, McDonald, Young, Campbell—all say they saw the steamers masthead light a few minutes after eight o'clock.

A. Yes, about ten or fifteen minutes after eight. That was the time I saw it.

Q. If they saw it at eight o'clock, or a few minutes after eight o'clock, you did not see it at that time?

A. No, I did not see it at that time. It was when they reported the light on the starboard bow that I went to look.

Q. What were you doing at that time?

A. Walking the quarter-deck fore and aft.

Q. Where is the wheel? A. It is aft.

Q. Of the quarter-deck?

A. It is on the quarter-deck.

Q. How wide is your ship at the quarter-deck?

A. I could not tell you; I never measured it there?

Q. How wide is the boat?

A. She is supposed to be twenty-nine ten in width, according to measurement.

Q. Whereabouts?

A. When she is equalized up from one end of the ship to the other.

Q. That is the general width? A. Yes.

Q. She is not that wide at any particular point?

A. Yes.

Q. If so, where is that point?

A. Midship or a little more aft of midship; her measurement is thirty-nine feet ten. I don't know what is exactly the widest.

Q. How long is the ship?

A. Supposed to be one hundred and ninety-six feet; six feet above her keel.

Q. Where did you get that measurement?

A. From the custom-house, from the people who measured her.

The COURT.—Has that anything to do with this case?

Mr. McCLANAHAN.—That is a verification of the actual measurement.

The COURT.—The question before me is whether the captain lost his vessel and his cargo and what they were worth. I don't see why I should go into that and encumber up this record as to the make of the ship unless the cargo was lost through it. Do you claim that the cargo was lost through the fault in the construction of the ship?

Mr. McCLANAHAN.—That was introduced and I am not attempting to defend the question as to the relevancy of this testimony. I simply say we have got to take the good and the bad under that stipulation; we have got to read all of this.

The COURT.—You can read it for a while, and see how much there is of it. If you gentlemen that the Court had jurisdiction, that consent would not give the Court jurisdiction. If it is offered for impeachment—if it is merely done from the fact that he testified—I want you to tell me if it is relevant—wherein it is relevant.

Mr. McCLANAHAN.—This is the libelant's case; it is cross-examination.

The COURT.—You are reading the cross-examination to the Court, and I do not wish to stop you from reading if it is at all relevant, if you can show its relevancy.

Mr. McCLANAHAN.—This is evidence offered on the question of the sails, how far they would go out and obstruct the light.

The COURT.—If you want to test the correctness of their testimony go on.

Mr. McCLANAHAN.—I am trying to prove the dimensions of the ship and to show that is an exact model of the ship.

The COURT.—Go ahead.

Q. In San Francisco? A. In Eureka.

Q. How near was that to the water line when she is loaded? A. About twelve feet, I guess.

Q. Twelve feet below?

A. Yes, below the water line when loaded.

Q. How long is she above the water line, do you know? A. No, sir.

Q. Do you know how far her masts are set apart?

A. About thirty-seven feet.

Q. Each one? A. Yes.

Q. Do you know what her beam is at her foremast?

A. No.

Q. Do you know what her beam is at any of her fore and aft masts is? A. No.

Q. Do you know how high the poop-deck is above the main deck?

A. About seven feet four and seven feet three; about seven feet three.

Q. Do you know how high the deck of the house is above the poop-deck? A. About two feet high.

Q. How high is the forecastle headway above the main deck? A. Six feet four.

Q. How high is that above the rail?

A. It runs about even with the rail.

Q. That point on the vessel is higher than midships, is it not? A. Yes.

Q. How much higher is the top of the rail at the forecastle than it would be midships?

A. I cannot answer that question.

Q. It is higher?

A. Yes. Because the deck drops forward to make the deck more straight. The deck drops at both ends; it drops towards both ends.

Q. I am talking about the rail, not the deck?

A. The rail higher forward than midships, considerably higher from the deck than it is midships.

Q. Do you know the length of the midships mast boom?

A. Thirty-six feet, I think, if I am not mistaken.

Q. Do you know the spanker mast boom?

A. Fifty-five feet.

Q. Do you know the length of the mainmast boom?

A. About thirty-six feet. (That is the second one.)

Q. About the same as the mizzenmast boom?

A. Yes.

Q. Do you know the length of the yards when you square them? A. No.

Q. You don't know whether they are longer or shorter than the boom?

A. Some are longer and some are shorter.

Q. I am talking about the fore yards.

A. They are longer.

Q. How far over the rail does the fore yard come if squared?

A. Right from its length of the yard arm, about twenty feet. That is above it. From the sling of the yard to the yard arm it is about twenty feet.

Q. Did you ever measure it? A. No.

Q. Why do you say that?

A. It is pretty near what I judge from the vessel I had before.

Q. How far over the rail would that yard come at that point if squared with the vessel?

A. The yard is supposed to come about twenty feet

from the sling of the yard in the arm and the ship to have thirty-nine feet ten inches beam.

Q. Figure that out and see how far it would stick out over the rail. A. About twenty feet.

Q. It would stick out over the rail twenty feet?

A. Yes, about that.

Q. Then the main yard on the foremast if squared with the vessel's beam would stick out twenty feet over the rail at that point? A. Yes, the fore yard; yes.

Q. How far above the rail does the sail on the fore arm come?

A. It comes about five or six feet inside of the yard arm.

Q. I don't think you are answering my question; how high would the bottom of the sail be above the rail?

A. About six feet above the rail.

Q. Did you ever measure that?

A. No, not particularly between five and six feet over the rail.

Q. Above the rail? A. Yes.

Q. How much beyond the rail outside of the rail?

A. About thirteen or fourteen feet.

Q. Outside of the rail? A. Yes.

The COURT.—That is when the yards, the sails on the yards, are at right angles with the ship.

Mr. McCLANAHAN.—When they are sailing with square yards. The whole ship was going at an angle.

Mr. NEUMANN.—Consequently these sails could not have obstructed; the sails of the square rig of the vessel

could not have obstructed the light, could not if they were going in that course that they said they were going.

The COURT.—Take that map; you say that it is right?

Mr. NEUMANN.—I say that this map here correctly illustrates the course of the "Claudine" and the course of the "William Carson," the course they claim.

The COURT.—Is there a map that tells the truth?

Mr. NEUMANN.—No, sir.

The further hearing of this case is continued until December 1st, at 10 o'clock A. M.

Third Day, December 1st, 1900.

Morning Session.

Mr. McCLANAHAN.—I will proceed with the reading of the cross-examination of John Piltz.

Q. Outside of the rail? A. Yes.

Q. Are these dead eyes in which are fastened the shrouds on the jiggermast above the deck of the house?

A. Yes.

Q. How much above the deck?

A. About two and a half feet.

Q. How much above the chock are they?

A. They may be a little above the chock; the chock is on the top of the deck.

Q. And the dead eyes run above them?

A. Yes, they come right inside of the chock; the lower dead eye comes just above the chock, the boom of the dead eyes.

A. There are two dead eyes, one is the shroud and one is the chain plate.

Q. Do you know the beam of the boat at the spanker mast? A. No, sir.

Q. Is it about the same width as it would be at the main mast? A. About the same.

Q. About the same as the foremast? A. Yes.

Q. Is the forecastle headway fore or aft of the square-rigged sail? A. Forward of it.

Q. How far forward does it begin?

A. It begins right from the forward end of the ship and comes aft.

Q. How near does it come to the foremast?

A. I will have to think it over.

Q. Think it over.

A. It would come within about ten or twelve feet of the foremast.

Q. How high would be the floor of the forecastle head way at its widest part above the bottom of your square sails?

A. About six feet away from the square sails.

Q. I am speaking about the height above it.

A. I don't understand what you mean.

Q. The square sail is set? A. Yes.

Q. And your forecastle head way is forward?

A. Yes.

Q. Take the widest part of your forecastle head way and how much above that floor or deck would the boom of the square sail come?

A. About six feet. And sometimes, if there is a square breeze of wind, about twenty feet.

Q. How high would the boom of the square forecastle be above the main deck?

A. About twelve or thirteen feet.

Q. When you use the expression "square yards," what do you mean?

A. Yards that lay right square across the ship.

The COURT.—That is on the forward mast?

Mr. McCLANAHAN.—Yes, sir.

Q. When you use the expression "square yards" what do you mean?

A. Yards that lay right square across the ship.

Q. At right angles with the beam of the ship?

A. Yes.

Q. Parallel with the beam and at right angles with the sides of the ship?

A. If this is the ship and you run the square yards, the square yards run across the ship like this.

Q. That would parallel with the beam and at right angles with the side? A. Yes.

Q. You said this morning that you were coming down Molokai channel. What channel is it?

A. It is called the Waikiki channel, I believe.

Q. Have you ever been here before? A. Yes.

Q. This map here shows on it the channel you refer to? A. Yes.

Q. Is that the channel there?

A. I believe it is called the Waikiki channel.

Q. Did you ever hear it called the Oahu channel?

A. No; it is generally pronounced the Waikiki channel.

Q. Had you seen the Molokai lighthouse that night?

A. Yes.

Q. How long before you saw the Diamond Head lighthouse?

A. I saw the Molokai light about half-past six in the evening.

Q. How long had you been on your trip from Newcastle? A. Fifty-one days.

Q. Anxious to get to your destination? A. Yes.

Q. Making all the speed you could that night?

A. Yes, according to the wind that we had.

Q. You were making all the speed you could?

A. Yes.

Q. And had the sails set to catch all of the wind?

A. All of the sails were set that would do the ship any good.

Q. You had the sails set to catch all of the wind that night? A. Yes.

Q. You were sailing free? A. Yes.

Q. From what direction was the wind?

A. I judge the wind was about east by north.

Q. Did you hear Mr. Nelson, your mate, testify in this case? A. Yes, I was here when he testified.

Q. He said the wind was south and east.

A. That is all right.

Q. What?

A. The wind was about east by north.

Q. He was mistaken, was he?

A. I guess he was.

Q. What occasion had you to notice the wind that night?

A. Because I was looking out to get to port and see that the sails were drawn.

Q. Were the gaffs on the fore and aft sails parallel with the beam of the boat that night?

A. Sometimes they were on one side and sometimes they were on the other.

Q. Answer my question.

A. At times they were and at times they were not. Sometimes they were parallel and sometimes they were not.

Q. That answer would apply as well to the spanker as to the jiggermast?

A. The spanker did not have any gaff to it.

Q. It applies as well to the spanker as to the mainmast? A. Yes.

Q. How were the booms on the jiggermast when the gaffs were at right angles with the side of the boat?

A. On the aft mast?

Q. I mean the mizzenmast?

A. How far the boom was out?

Q. Yes, when the gaffs were at right angles with the side of the boat?

A. We had the sides about half way out, toward the side of the ship.

Q. When the gaffs were at right angles?

A. Yes.

Q. Are you sure about that?

A. I am sure about that.

Q. How was the boom on the mainmast when you had the gaff at right angles with the side of the boat?

A. It was in the same position as the mizzenmast, about half way out to the railing.

Q. How far would that bring the end of the boom from the rail? A. About half way.

Q. How far would that be?

A. Eight or nine feet.

Q. That night, prior to the collision, did you at any time have the boom of the mainmast and the mizzenmast out to the rail? A. No, sir.

Q. Why didn't you?

A. Because it is not safe to have them out.

Q. Why not.

A. Because you break off the gaffs on the side, on the sail, because the gaffs swing out too far and the jaws will break off.

Q. Don't you ever sail with the boom further out than the rail? A. No, sir.

Q. Never did? A. No, sir.

Q. On the mainmast and the mizzenmast?

A. No.

Q. When you sail free? A. No.

Q. How far will those booms go out if you slacken them up as far as you can, the booms on the mainmast and the mizzenmast?

A. Probably they will go to the rail.

Q. Will they go to the rail?

A. No, I don't think the sheets are long enough to go to the rail.

Q. Did you ever measure them?

A. The sheets were out so the end of the boom would not go over the rail.

Q. Did you ever measure the sheets? A. No.

Q. Why do you think they would not allow the boom to go over the rail?

A. I told the rigger not to cut the sheets too long when the ship was rigged.

Q. What was his name? A. Aversight.

Q. What had you to do with the building of the boat?

A. The rigger asked me how long I wanted the sheets and I said to cut the sheets so that the boom would not go over the rail, and leave the booms three or four feet inside the rail.

Q. Was that done? A. That was done.

Q. How do you know? A. Because I was there.

Q. You were there when what took place.

A. When he cut the rope.

Q. Did you have the boom out three or four feet from the rail? A. Yes.

Q. And you cut the rope so it could not go further?

A. Yes.

Q. Was that the same sheet and rope on the boat when you were run into?

A. Yes, it was shrunken up a little, I think.

Q. Why was it shrunken?

A. Because the rope will wear out.

Q. Would you know the rope if you should see it?

A. No, I could not tell it now.

Q. What other directions did you give about building the boat? A. Nothing at all.

Q. Why did you give that particular direction?

A. Because the rigger asked me.

Q. Is that all that he asked you?

A. No, there were several things he asked me.

Q. How do you happen to remember this?

A. Because he asked me.

Q. How do you remember this?

A. There are lots of other things that he asked me that I cannot remember; I can remember one instance besides.

Q. What is it?

A. He asked me if I wanted wire panels from the forearm to the top, or whether I wanted the tackles to go right out to the yardarm. I told the rigger to have the panels hooked into the yardarm, with a block in one end and the rope hooks in the other end. He asked if I wanted the tackle thrown out to the yardarm, or whether I wanted wire panels in there. I told him if the wire panels came up to put them in; if they had not come to the yard, to leave the tackle out to the yardarm.

Q. You say this shroud would not allow the sheets of the mizzen and mainmasts to go out further than four or five feet from the rail of the barkentine?

A. No.

Q. What did you say?

A. I told him to haul the boom out within three or four feet of the rail and put on the sheets accordingly.

Q. The sheets would not allow the boom to go further? A. No, sir.

Q. And that order was carried out that you gave?

A. Yes.

Q. If you had wished to put the main and mizzen boom over the rail you could not have done it with those sheets? A. No.

Q. You are sure about it?

A. I am sure of what I told the rigger.

Q. Are you sure that was the condition of things when you were on the trip just before the collision?

A. No.

Q. You are not sure? A. No.

Q. It might have been longer?

A. The rope might have been stretched.

Q. And might have been spliced and lengthened?

A. No, it was not necessary.

Q. You said the rope was worn?

A. Because it had been respliced?

Q. By whom?

A. I could not tell you.

Q. You don't know whether it was longer or shorter after it was spliced?

A. A rope in three splices is bound to be shortened.

Q. Didn't splice a piece on?

A. I don't think so; I know they did not.

Q. After it was broken and spliced it was shorter than when first made?

A. It might have been the same length and the rope might have stretched that much.

Q. If it had not stretched it would be shorter?

A. Yes.

Q. Do you know whether it was stretched at all?

A. No, but I guess it did. I don't know how much. New rope is bound to stretch more or less.

Q. What kind of a man is F. A. Nelson—was he an able seaman?

A. He was second mate on board the ship.

Q. A good man? A. Yes.

Q. Do you know what he said about the booms?

A. No.

Q. About the mizzen and main booms? A. No.

Q. He said they pretty well stuck over the starboard side, not much over the rail; you say that was impossible? A. Yes.

Q. You remember he afterwards corrected that statement and said pretty well stuck out over the starboard side, never over the rail.

A. They never were over the rail as long as he was on board and as long as I was on board there.

Q. Do you remember of McDonald, in answer to the question, Were they overhanging the rail? answering "Yes." A. Yes.

Q. And the next day he corrected it by saying the booms were not over the rail, that they were inside of the rail? A. Yes.

Q. With your booms out as far as they could get them, with your shrouds on the main and mizzenmast, what would be the angle of the gaff?

A. That all depends on the winds.

Q. Say it was full?

A. If you have a strong breeze the gaff might break off; slacken them off that far.

Q. How far? A. As far as you say.

Q. I have not mentioned any length. As far as the sheets would go?

A. Now, you say sheets? You said shrouds; the gaff would probably be outside, about fifteen feet over the side.

Q. That is not what I mean. Running with the boat, at what angle would the gaff be?

A. The gaff would stand out if there was any wind in that direction.

Q. Here is the boat, this is the bow, and this is the stern; here is the mizzenmast. You have the boom in like this? A. Yes.

Q. Four or five feet from the rail here? A. Yes.

Q. How would your gaff be?

A. Hold on. How much wind is there?

Q. Sailing free; all sails used.

A. Sailing free with a light or a strong breeze?

Q. Light wind.

A. It might be perpendicular, straight up and down.

Q. Like that?

A. Like that, right over the boom, or, it might be over the other side when the ship rose.

Q. Were was the gaff that night?

A. They were from side to side. The ship rolled pretty heavily, as there was quite a swell on.

Q. Like this?

A. Yes, my headway was about two and a half or three knots per hour.

Q. Did your gaff flop like that? A. Yes.

Q. You were practically helpless that night?

A. Most decidedly.

Q. You agree with the other witnesses in that this collision took place at eight o'clock?

A. Yes, about that.

Q. How soon after you saw the masthead light of the "Claudine" was it that you saw either of her colored lights?

A. About ten minutes.

Q. At what hour was that?

A. It was about twenty-five minutes past eight.

Q. 8:25? A. Yes.

Q. What light was it you saw at 8:25.

A. I saw the red light first. At first saw all of the electric lights kind of shining on the water. That was after I saw the masthead light and before I saw any colored lights.

Q. Was that because she was too far off to see either of the colored lights? A. Yes.

Q. At 8:15? A. No, this was before.

Q. At 8:15 you first saw the colored lights?

A. At 8:15 I saw the masthead light.

Q. At that time did you see his electric lights?

A. Not yet; that was shortly after.

Q. When did you see his electric lights?

A. About ten minutes later.

Q. At 8:25 you saw his electric lights? A. Yes.

Q. When did you see either of the colored lights?

A. I took my glasses and saw his red light.

Q. At 8:25? A. Yes.

Q. With glasses you saw his red light?

A. Yes.

Q. Could you see his green light then?

A. No, I saw the green light by keeping on looking. About a minute or two after I saw the red light.

Q. About 8:27? A. About 8:26.

Q. With the glass? A. Yes.

Q. You saw his green light? A. Yes.

Q. Had you lost sight of the red light then?

A. No.

Q. You saw both lights? A. Yes.

Q. At 8:27 you saw both lights? A. Yes.

Q. Where were the lights when you saw them at 8:27 —did you see them off the starboard bow?

A. Yes, on the starboard side.

Q. How was she coming?

A. After she nearer to us I took bearings.

Q. I am talking about 8:27.

A. I could not tell you.

Q. Why not? A. Because she was too far away.

Q. You saw both lights, didn't you—you saw the headlight and the electric lights? A. Yes.

Q. At 8:27?

A. Yes, but she was too far off to see how she was coming. I could not get bearings as to which way she was going.

Q. You did not think she was going from you?

A. No.

Q. You knew she was coming towards you?

A. Yes, I knew that.

Q. You could not tell how she was coming?

A. Not at that time.

Q. Was it a foggy night?

A. No, I knew she was coming towards us.

Q. Any clouds? A. Yes.

Q. A black night? A. Dark, but new moon.

Q. When did you first learn how she was coming?

A. As she came nearer towards us we were going ahead at the same time, and the steamer came along this way and I got her masthead light between her red and green lights and took the bearing of the steamer.

Q. When you got her masthead light between her red and green lights?

A. Yes, in the center as near as I could judge, I took the bearing of the steamer.

Q. Well, how was she coming?

A. As near as I could judge she was coming about east half south.

Q. On what part of the boat were you when you did that?

A. Standing right aft of the compass.

Q. What did you do then—why did you do that?

A. Because I wanted to see where the steamer was heading.

Q. Why did you want to know that?

A. Because it was my place to do so, to take the bearing of any ship.

Q. Was there any danger then? A. No.

Q. No danger at all? A. No.

Q. Even though the sails were flopping?

A. Yes.

Q. When was this bearing taken, how soon after you saw both of her lights, all of her lights—how many minutes after that? A. That I could not tell you.

Q. You saw all of her lights, the electric lights and the colored lights and the masthead light, at 8:27?

A. Yes.

Q. Was it before or after one bell that you took this bearing?

A. It was just about one bell; just about one bell.

Q. That would make it about 8:30? A. Yes.

Q. You did not attempt to make any bearing at 8:27?

A. No.

Q. Was there any change in the wind from the time you saw her masthead light and the time you took this bearing? A. No.

Q. Your sails still flopped? A. Yes.

Q. Your gaffs? A. Yes.

Q. You were making about three knots an hour?

A. Two and a half or three knots, I suppose.

Q. How fast do you think the steamer was coming?

A. At that time I did not think about it.

Q. What did you do after you took this bearing?

A. Kept walking the quarter-deck.

Q. Didn't you think there was any danger then?

A. No, sir.

Q. Why? A. Because the steamer was far away.

Q. How far—you said you could not tell?

A. When I saw his red and green light.

Q. I am talking about the time you took the bearing.

A. I could not tell you at that time.

Q. When did you tell how far she was?

A. When I first saw her, her red and green light, and when they became visible to me.

Q. How far off was she?

A. I judged the steamer to be about three miles off.

Q. About three miles off? A. Yes.

Q. You did not calculate how far off she was after that, at that or any time? A. Yes.

Q. When did you next attempt to measure her distance? A. When he shut off his red light.

Q. When was that? A. That was about 8:35.

Q. By shutting off his red light you mean that the red light became invisible and the green alone was visible? A. Yes.

Q. Did you take her bearings then? A. No.

Q. Prior to shutting out the red light at 8:30 did you think there was any danger of a coming collision?

A. No.

Q. You had not crossed his course, had you at 8:30?

A. Yes, just about crossed his course according to my bearing.

Q. How could you cross his course and see both of his lights? A. I did not see both of his lights.

Q. Not after you crossed his course? A. No.

Q. When did you cross his course?

A. When I took the bearings of the steamer.

Q. At 8:30? A. Yes.

Q. You crossed his course? A. Yes.

Q. That was a few minutes before the collision?

A. Yes, it was.

Q. When the red light was shut out at 8:35, and you saw the green light, there was still less chance of a collision? A. Yes.

Q. Why was that? Explain to the Court your reason for making that statement.

A. Because I was on the starboard side of the steamer at the time he shut off the red light, and I had crossed his track.

Q. So, if your tracks were continued you never would meet? A. No, if the steamer had kept its course.

Q. If your courses had continued you never would have met? A. Yes.

(By STENOGRAPHER.—From manner of answering, the witness meant no.)

Q. Before you crossed his course was there not danger all of the time?

A. No, not so long as the steamer was so far away from me.

Q. You call two and a half or three miles a long ways off? A. Yes.

Q. At 8:30 you saw only his green light; how long did you continue to see that? A. I saw both light at 8:30.

Q. You said at 8:30 you crossed his course?

A. Yes.

Q. After you crossed his course you did not see but one light? A. I saw his red light yet at 8:30.

Q. When did you lose sight of the red and see only the green light?

A. At 8:35 I lost sight of the red light.

Q. How far off was she then?

A. I judged her to be off about a mile.

Q. Were your sails still flopping? A. Yes.

Q. How long did you continue to see the green light? You saw it first at 8:35; how long did you continue to see it? A. For about three or four minutes.

Q. Then what happened?

A. Then the steamer blew one whistle, and he changed his course to starboard.

Q. Ported his helm? A. Yes.

Q. And then was about a minute before the collision?

A. A minute or two.

Q. Not less than a minute, was it?

A. No, I don't think so.

Q. Not over two? A. Not over two.

Q. When did you make out the lines of the "Claudine"?

A. I saw the steamer before he ported his helm.

Q. A minute or two before the collision?

A. Well, a little before that even.

Q. Two or three minutes before the collision?

A. Yes, five minutes before the collision.

Q. About five minutes before the collision?

A. Yes, four or five minutes before the collision.

Q. That would be eight thirty-five or eight thirty-six?

A. Yes.

Q. You had seen the electric lights ten minutes before and knew it was a steamer? A. Yes.

Q. You still kept your course, did you?

A. Yes.

Q. Did you think any danger was upon you when he ported his helm? A. Yes.

Q. What did you do?

A. I sung out to the steamer.

Q. Just as soon as he ported his helm?

A. Yes, as soon as he ported his helm; as soon as I could holler, I commenced to holler.

Q. Was he near enough to hear you at that time?

A. I don't know that.

Q. Do you think so? A. Yes.

Q. Where were you standing?

A. By the spanker rigging.

Q. You were standing by the spanker rigging?

A. Yes.

Q. Who was standing by the wheel?

A. McDonald.

Q. No one else? A. No.

Q. Did you give any orders to luff? A. No.

Q. Why not?

A. I did not know at what time the steamer would change her course again.

Q. Did she have time to change her course again after porting her helm and before the collision, after blowing her whistle and porting her helm and before the collision? A. Yes.

Q. And could have avoided the collision?

A. I don't think so.

Q. She could not have changed her course for any purpose, she could not have changed her course and avoided the collision?

A. No, I don't think so; after she ported her helm and blew the whistle she was too close.

Q. What course do you think she was steering when she ported her helm?

A. I judge about southeast, southeast by south.

Q. What makes you make that statement? Did you take any record of it at that time? A. I took notes.

Q. Before she ported her helm from the south?

A. No.

Q. Before she ported her helm what way was she coming? A. Coming about east, half south course.

Q. And when she ported her helm she headed southeast? A. Yes, southeast or southeast by south.

Q. Magnetic?

A. I did not take any bearing; I just judged it.

Q. Just as she ported her helm you could see the lines of the boat "Claudine"? A. Yes.

Q. Suppose she had no colored lights at all, could you have told whether she changed her course or not from the electric lights? A. Yes.

Q. That was because you could see her electric lights and hull? A. Yes.

Q. After she did changed her helm and changed to starboard course southeast, did she change her course again before she struck you?

A. I could not tell you?

Q. Why not?

A. Because the thing was done so quickly. I sung out to the steamer and she still kept coming on to us.

Q. Do you mean to say that you could not tell by looking at the steamer whether or not she changed her course after porting her helm?

A. I could not tell you.

Q. You could see the electric lights and the hull, and both side-lights, and you could not say whether or not she changed her course after she ported her helm?

A. No.

Q. Were you excited? A. No.

Q. To holler was all that you could think of?

A. Yes, that was all.

Q. You did not think to luff at all? A. No.

Q. You did not give any orders? A. No.

Q. And you knew the steamer was coming on you?

A. Yes.

Q. Why did you do that?

A. Because it was my duty to do so.

Q. Do you know the duties pertaining to the master of a sailing vessel? A. I think so.

Q. As regards lights, and precaution against collision, and things of that kind, what is the duty of a sailing captain?

A. To see that the lights are burning properly.

Q. The colored lights, you mean? A. Yes.

Q. What else? A. That is all.

Q. And keep his course? A. Yes.

Q. Is that all? A. Yes.

Q. Suppose a steamer coming along at night came behind you, what would you do?

A. I would hold up a torch.

Q. Did you have a torch on board of the "Carson" that night? A. Yes.

Q. Where was it? A. In the cabin.

Q. Where was the cabin? A. Downstairs.

Q. How far from where you stood?

A. About eight feet.

Q. Is that the place to keep a torch?

A. Yes, that is the place to keep it, down in the wash-room.

Q. Did you think of displaying a torch that night?

A. No.

Q. Do you know of the rule that requires you to display a torch when a steamer is coming on you?

A. On certain occasions.

Q. What are those occasions?

A. When the steamer is coming from behind.

Q. To what law is that you refer?

A. It is the United States law.

Q. Are you quite sure about that? A. Yes.

Q. You did not consider it your duty to display a torch, because the steamer was not coming from behind you? A. Yes.

Q. That was the only reason that kept you from displaying a torch? A. Yes.

Q. Did you think of a torch? A. Yes.

Q. And decided not display it because the steamer was not coming from behind you? A. Yes.

Q. If the steamer was coming up to the side would you display a torch? A. No.

Q. Why not?

A. Because he could see our sidelights.

Q. What is the use of a torch?

A. It is used if the vessel is coming from behind so they cannot see the side of your boat.

Q. That is the law as you understand it?

A. Yes.

Q. Did you read that law? A. Yes.

Q. It says when a steamer is coming from behind, you must show a torch? A. Yes.

Q. That night you did think of the torch, but did not display it because the vessel was not coming behind you?

A. Yes.

Q. When did you think of the torch?

A. I thought of the torch about when I first saw the steamer.

Q. About eight fifteen? A. Yes.

Q. Did you send for the torch? A. Yes.

Q. How long would it have taken you to have gotten the torch? A. About a minute or two.

Q. Would it take that long? A. Yes.

Q. Why?

A. Because of having to go downstairs and get it and come back again.

Q. Couldn't you have done that in fifteen seconds if in a hurry? A. No, sir.

Q. Before the porting of the helm of the "Claudine" did you think the "Claudine" was changing her course?

A. No.

Q. You thought she was coming straight across?

A. Yes.

Q. She did not seem to change her course until she ported her helm? A. No.

Q. Did the thought occur to you that perhaps your starboard light was not seen by the steamer?

A. No, I didn't think of that.

Q. The thought did not occur? A. No.

Q. If it had occurred to you, what would you have done?

A. I would have done the same thing I did this time.

Q. You would not have displayed a torch?

A. No.

Q. If you had known positively that the green light was hidden from the "Claudine" would you have displayed a torch? A. No.

Q. What would you have done?

A. Probably would have shown a torch.

Q. Do you know whether the "Claudine" did see your green light? A. I don't know.

Q. You assumed that she did? A. Yes.

Q. You thought she ought to see it? A. Yes.

Q. That is the only thing that kept you from showing a torch? A. Yes.

Q. Because you thought if she had not seen the green light you would have displayed a torch?

A. No, sir; I would let the ship go as she was going.

Q. And have been run down?

A. She would not have run us down.

Q. If you had thought she did not see your green light what would you have done?

A. I would have had the lights placed so she could have seen them.

Q. If you thought she didn't see them?

A. I would have done what I did.

Q. Would not have shown a torch? A. No.

Q. Just sailed on? A. Yes.

Q. Even though you thought she didn't see the green light? A. Yes.

Q. You would not have changed your course?

A. No.

Q. Would you have blown a horn? A. No, sir.

Q. You think the duty of a sailing master is to simply stick to the course when he sees a steamer?

A. Yes.

Q. And not do anything to protect himself?

A. That is right.

Q. Suppose there is a fog.

A. Then blow a horn.

Q. Why? A. To know there is a ship around.

Q. That takes the place of a light A. Yes.

Q. When you have no lights what do you do?

A. I don't know what we would do. I would make a light.

Q. Any other lights on your boat besides the green and red lights?

A. There are two anchor lanterns.

Q. Where are they hung?

A. One up in the fore rigging and one aft.

Q. Were they lit? A. No.

Q. Any other lights on the boat?

A. There was a light in the cabin?

Q. Forward? A. Aft.

Q. No light forward at all?

A. Not that I know of.

Q. Don't you know? A. No, I don't know.

Q. Were you not there? A. Yes.

Q. You can't swear that there was a light there?

A. No.

Q. You say there was one light in the cabin?

A. Yes, one light in the cabin, and it was turned down low.

Q. Why?

A. Because there was no one in the cabin.

Q. Are you a married man? A. Yes.

Q. Your wife on the boat? A. Yes.

Q. Where was she?

A. On deck at times and sometimes she went below.

Q. In the cabin? A. Yes.

Q. She gave her orders to turn when she came out?

A. My steward fixed the light.

Q. You came on deck before there was any need of a light in the cabin or elsewhere? A. Yes.

Q. How did you know the light was turned down in the cabin? A. I could see it.

Q. From the deck? A. Yes.

Q. See the light itself?

A. I didn't take any notice of that, exactly.

Q. How do you know that it was turned down?

A. Because I could see on account of the skylight.

Q. Did you look through the skylight? A. No.

Q. How do you know that it was turned down?

A. When I walked by I could tell from the shine of the light whether it was turned high or low.

Q. You know our defense in this case? A. Yes.

Q. About seeing a bright light? A. Yes.

Q. There was no bright light on your boat?

A. No.

Q. Your cabin light was turned down so it could not possibly have fulfilled the requirements of a bright light?

A. No, sir.

Q. Did you order the cabin light turned down this night? A. No.

Q. Your wife was going and out of the cabin?

A. Yes.

Q. Captain, what is a mushy night?

A. I don't know.

Q. One of your men called it a mushy night.

A. I don't know what it is.

Q. When you got into the boat, the "Claudine" boat, after the collision did you talk with anyone?

A. I talked with the mate.

Q. What did you say to him?

A. I asked him if he was the mate of the ship, and he said "yes," and I said, "Didn't you fellows see our green light?" and he said, "Yes, and a mighty good light at that."

Q. What else? A. That was all of the talk.

Q. That was all that was said? A. Yes.

Q. Didn't you say you luffed when you saw that you were about to be run into? A. No.

Q. Do you know whether the man at the wheel did luff or not? A. No.

Q. He could do it without your knowing it?

A. I don't think he would.

Q. He could do it without your knowing it?

A. No, I don't think so, because I wasn't far enough away not to know of it.

Q. You were looking at the vessel coming on you?

A. Yes.

Q. And were not paying attention to the wheel, were you? A. No.

Q. He could have luffed and thrown the wheel to port, to starboard, and you never would have known it?

A. I don't think he ever did it. He could have done it without my knowledge, but I don't think he did.

Q. Where did the "Claudine" strike you?

A. On the starboard bow.

Q. Whereabouts? A. I could not tell you.

Q. You cannot tell? A. No.

Q. In the complaint you say forward of the cathead?

A. Somewhere forward around the cathead.

Q. You spoke of the water running into the hole and sinking the boat; where was the hole?

A. It must have been under the water; when I came forward I did not see any. I saw the starboard anchor gone and the headgear was gone.

Q. Was the cathead gone?

A. No, it must have been knocked out of the ship; I could not say.

Q. What took the anchor down?

A. I don't know; the steamer "Claudine," I suppose.

Q. If the cathead had been knocked off, the anchor would have gone? A. No.

Q. Does the cathead keep the anchor up?

A. One end of it, a part of it.

Q. If you knock that support away would not the anchor fall? A. No.

Q. It would still stay in place? A. Yes.

Q. What made the anchor fall?

A. I don't know.

Q. You don't know where you were struck, except that it was around the cathead? A. Yes.

Q. Tell us about the position the "Claudine" was in when she struck you. You were on a southwest course; explain how she struck you.

A. As near as I can tell, she came on at right angles.

Q. Right angles to you? A. Yes.

Q. She was this way and you were southwest? That would be exactly right angles? A. Just about, yes.

Q. Did she strike into you? A. No.

Q. What happened after she struck?

A. He shoved ahead of our vessel right forward up to her side, because the steamer was standing alongside of us.

Q. How do you know that your vessel was shoved up to the side of the "Claudine"? She struck her like this (showing). A. Yes.

Q. Is not your vessel longer than the "Claudine"?

A. Yes.

Q. If she struck like that at right angles would they both not go together?

A. I should think if she stayed there long enough they would shove the vessels together; the "Claudine" was going ahead.

Q. The "Claudine" cut right through you?

A. No.

Q. She stopped? A. Yes.

Q. And the vessels swung together? A. Yes.

Q. It was not your vessel that was doing all of the swinging? A. No.

Q. Both vessels swung together? A. Yes.

Q. Here is a little piece of wood representing the "William Carson" and here is another piece of wood to represent the "Claudine"? A. Yes.

Q. Show me just how they struck. Get off of the witness stand, so the Court may see that was about your course. A. Yes, right there.

Q. And the course of the "Claudine" was like that, was it? A. Yes.

Q. Southeast? A. Yes, about right angles.

Q. It struck her about the cathead; it would be about here? A. It might have been a little further out.

Q. You say in the complaint it struck her forward of the cathead? A. I said about the cathead.

Q. Read your complaint and see.

A. Well, that is all right.

Q. Forward of the cathead? A. Yes.

Q. After striking you swung around like this?

A. Yes.

Q. Yes, both vessels? A. Yes.

Q. Then the "Carson" began to sink on the starboard side? A. She went down bow first.

Q. Like this? A. Yes.

Q. Prior to the collision, and from ten to fifteen min-

utes prior to the collision, was there any excitement on your boat? A. No.

Q. No excitement at all?

A. No; no excitement.

Q. All of your men on deck were looking at those lights? A. Yes, I guess so.

Q. And between the times that you first saw the lights and the time of the collision, there was no order given by you or by any of the officers at all to any of your crew? A. No.

Q. And nothing was done by you? A. No.

Q. How much did the "Carson" sell for?

A. Five hundred and fifty dollars.

Q. With the cargo? A. Yes.

Q. Who owned the cargo?

A. It was consigned to Hackfeldt.

Q. Who owned the cargo of coal?

A. I could not tell you; the Pacific Mail owned it.

Q. Don't you swear in this libel that you and your co-libelants are the owners of this cargo of coal?

A. Yes.

Q. Now, you say the Pacific Mail own it?

A. It was to be delivered to them.

Q. Did you and your colibelants have anything to do with the cargo of coal other than as carriers of it?

A. No.

Q. You are not the owners of the coal?

A. No.

Q. How many feet are in a nautical mile, or knot? How many feet? A. About six thousand (6,000).

Q. As a matter of fact, 6,080 feet, is it not?

A. Somewhere along there.

Q. With your vessel going at the rate of three knots an hour, how many feet would that be in a minute? Do you wish to figure that out?

A. No, I do not wish to figure that out.

Q. Can't you figure it?

A. No, I don't want to figure it.

Q. You don't know how many feet a minute your boat will be going? A. No; that is right.

Q. You have the ability to figure that out?

A. Oh, yes.

Q. What is the objection to doing so?

A. Because I don't feel like it.

Q. It would assist the Court to know how many feet the boat was going a minute.

By the COURT.—That is already computed, Mr. McClanahan.

Mr. McCLANAHAN.—How many points off your starboard beam did the "Claudine" bear when you first saw her at eight fifteen?

A. I guess she was bearing about west.

Q. How many points?

A. She was bearing about west.

Q. How many points would that be?

A. Four points.

Q. Off the starboard bow? A. Yes.

Q. She was not northwest, was she?

A. No, sir.

Q. Just above the starboard beam?

A. No, she was not northwest.

Q. Mr. Nelson says she was headed for the "Carson's" starboard beam when he first saw her; is that correct?

A. I don't remember what he said.

Q. If he says that is it true? A. Yes.

Q. Any point on the starboard side of the bow of the ship would be starboard beam?

A. Yes, about right.

Q. Any point? A. Yes.

Q. You don't mean that. When a man says she was headed right for our starboard beam you don't mean that she was headed for any point on the starboard side of the boat?

A. When did he make that statement?

Q. He made a good many corrections. Is that a correct statement?

A. Yes, the steamer naturally headed for the starboard side.

Q. Is that a correct statement, to say she was headed for your starboard beam?

A. No, it is not exactly correct. She was headed for our starboard side.

Q. When you say she was headed for your starboard beam what does it mean?

A. When the steamer is right on our beam.

Q. Coming down on right angles? A. Yes.

Q. Does it mean coming down at right angles?

A. Yes.

Q. If he made that statement it is not true?

A. No.

Q. If he made that statement it is not true?

(Objected to as improper and incompetent.)

The COURT.—I think that is a matter of argument. (Objection sustained.)

Mr. McCLANAHAN.—Mr. McDonald, in his examination, has made use of the same expression. He says, "I went to the wheel at eight o'clock; that a few minutes after he saw a light on the starboard beam and could make out that it was a steamer"; is that true?

A. That is all right, whatever he says.

Q. Does that not mean that he saw it at right angles with the starboard side of the boat?

(Objected to as incompetent, irrelevant, and immaterial. Objection sustained.)

Q. When you say as a nautical man that you see a light on the starboard beam what do you mean?

A. I mean I see the vessel abreast of me.

Q. Coming at you at right angles?

A. She may be coming, say, directly as I am coming and still be abeam of me; she may go in the same direction or come on the opposite side and be abeam of me.

Q. But the light is right out from you on the starboard side? A. On the starboard side.

Q. Right out from the beam of the boat?

A. It was forward.

Q. I am talking about the expression "starboard beam"; don't it mean right out from the boat on the starboard side? A. Yes.

Q. Mr. Young says they were making for our stern at right angles. Is that the same thing as being right out on the starboard side?

A. It is synonymous with being on the starboard beam?

Q. From where he stood I guess she did.

A. Yes.

The COURT.—The question is the meaning of the term?

A. She was coming in.

Q. Merely as to the meaning of those terms?

Mr. McCLANAHAN.—Is that the same as abeam?

A. Yes, that is about the same as abeam, right angles or abeam.

Redirect Examination of JOHN PILTZ.

Mr. NEUMANN.—To whom was that cargo of coal to be delivered?

A. To the Oahu Railway Company.

Q. Who was to deliver it?

A. I was to deliver it to them.

Q. Your vessel had the possession of it, didn't it?

A. Yes.

Q. You had charge of the coal? A. Yes.

Q. Was there any freight due the vessel on the coal?

A. Yes.

Q. How much?

A. It amounted to six thousand eight hundred and some odd dollars.

Q. How many tons of coal were there?

A. We took on thirteen sixty-five tons of coal in Newcastle, less two per cent; there is more or less coal goes

to waste in loading and discharging, which was taken off the 1365 tons.

Q. What was the coal worth in Newcastle?

A. It was worth over two thousand dollars.

Q. You can say with some certainty that the coal and freight was worth how much?

A. Nine thousand five hundred dollars.

(Libelant next offered and read in evidence the testimony of F. A. Nelson, Dan McDonald, Andrew Young, and Alexander Campbell, taken before W. L. Stanley, Second Judge of the First Judicial Circuit, on a petition of John Piltz to perpetuate testimony of said Nelson, McDonald, Young, and Campbell. It is admitted by and between the parties to this cause that a stipulation as to the value of the steamer "Claudine" has been entered into, which stipulation is of record and a part of the files in this case.)

The COURT.—That the steamer "Claudine" is worth one hundred and twenty-five thousand dollars?

Mr. McCLANAHAN.—Yes, sir.

Mr. NEUMANN.—With the consent of libelee I desire to recall to the witness stand Captain Piltz, to testify further as to the course of the barkentine "William Carson," and the supposed course of the steamer "Claudine" at the time of the collision.

Mr. McCLANAHAN.—No objection is made.

JOHN PILTZ recalled.

Direct Examination.

Mr. NEUMANN.—As laid down there what is the course of the "William Carson"? A. Southwest.

Q. That is the way she was sailing and the course she held at the time of the collision? A. Yes.

Q. What was the course as appeared to you from your vessel that the steamer was taking?

A. East half south.

(They allege that it was east three-quarters south.)

Q. Call attention about where she was and in what direction she was sailing, and at what time the person whoever was in charge of her ported the helm?

(Objected to on the ground that the courses had not been made to a scale. Question withdrawn.)

Mr. NEUMANN.—It is hereby stipulated by the parties that on Friday, the 12th day of October, A. D. 1900, at the hour of 11 o'clock A. M., the libelants may take the deposition of John Piltz and David Robinson, respectively, before W. J. Robinson, and consent that said depositions may be read in evidence in said case, at the trial thereof, with the same force and effect as the oral testimony of the two witnesses, unless the attendance of the two witnesses can be obtained at the said trial. (To Mr. McClanahan.) I suppose you will admit that neither of them are here?

Mr. McCLANAHAN.—Yes, sir.

Mr. NEUMANN.—Then I will read the deposition of David Robinson, which is as follows:

Testimony of D. ROBINSON, called for libelant; sworn.

(Mr. NEUMANN.)

Q. What is your occupation?

A. Master mariner.

Q. Are you in command of any vessel now?

A. Yes, sir.

Q. Please state her name.

A. The barkentine "Skagit."

Q. Where is that vessel now—your vessel?

A. Lying in the port of Honolulu.

Q. Will you please describe her rigging, and state how many masts she has, and how she is rigged?

A. Three masts, barkentine rigged.

Q. You carry lights on your vessel?

A. Yes, sir.

Q. I mean red and green lights?

A. Red and green lights.

Q. State, if you please, where those lights are carried on your barkentine.

Mr. McCLANAHAN.—The defendant objects to the question as being incompetent, irrelevant, and immaterial where the lights are carried, and the color of the lights of the "Skagit"; it not being evidence of where the lights of the "William Carson" were carried.

The WITNESS.—Carried on the mizzen rigging.

Mr. NEUMANN.—On the mizzen rigging?

A. Yes, sir.

Mr. McCLANAHAN.—I ask that the question and answer be stricken out as incompetent, irrelevant, and immaterial, the evidence in this case showing that the lights of the "Carson" were carried on the spanker rigging.

Mr. NEUMANN.—(To the Witness.) Where is the mizzen rigging of your vessel, the rigging furtherest aft?

A. Yes, sir.

Q. Do you know any other barkentine that carried the lights on the furtherest after rigging?

Mr. McCLANAHAN.—I object to that question as incompetent, irrelevant, and immaterial.

The WITNESS.—Yes, sir.

Mr. NEUMANN.—Can you state any reason why the lights are carried there instead of being carried on the forward rigging?

Mr. McCLANAHAN.—I object to that question as being incompetent, irrelevant, and immaterial.

The WITNESS.—Carrying them forward we wash them away; I have tried five or six times to carry mine there and the sea washed them off.

Cross-Examination of D. ROBINSON.

(Mr. McCLANAHAN.)

Q. If, Captain, carrying them on the spanker rigging of a four-masted barkentine they are obscured or in danger of being obscured by the masts or the rigging, would that be any excuse for not carrying them forward or on

some other part of the vessel where they cannot be obscured?

A. The masts nor the rigging will not hide the lights if they are carried outside of the rigging altogether.

Q. If there would be danger of their being obscured?

A. No, sir.

Q. If there would be danger?

A. I don't think that there would be any danger.

Q. If there were danger, assuming that the sail, for instance, might obscure the lights on the spanker rigging, would that be the proper place to carry them?

A. No, if the sails would obscure them, it would not be the proper place.

Q. Do you know what are the legal requirements as to the color of the light and how it shall shine, and where it shall shine? A. Yes, sir.

Q. Where?

A. Turn right ahead to two points abaft the beam, to show two points.

Q. On both sides?

A. Yes, sir, on both sides.

Testimony of JOHN PILTZ, called for libelants; sworn.

Mr. NEUMANN.—I suppose you don't mind my asking him leading questions?

Mr. McCLANAHAN.—No, sir.

Mr. NEUMANN.—(To the Witness.) Q. I believe you were the captain of the "William Carson" that was wrecked by being run into by the steamer "Claudine"?

A. Yes, sir.

Q. Now, when on board did you or did you not have any effects, personal effects, belonging to you?

A. I had everything.

Q. You had personal effects? A. Yes, sir.

Q. Now, you have made a list, Exhibit "A," attached to your complaint, in which you set forth, seriatim what you had there? A. Yes, sir.

Q. I wish you would look over that list and state whether or not those things were there, and whether the value you have set forth is the value or was the value at the time you had them on board.

A. Well, I consider that is all right.

Q. I asked you to look over and state whether these are the articles that you had on board at the time and whether the value stated in the complaint was the value of those articles at that time.

A. That is what it was.

Q. Now, what became of those articles?

A. They all went down with the ship.

Q. They were lost? A. Yes, sir.

Q. Were any of those articles that are enumerated there saved at any time?

A. Not that I know of, sir.

Q. But you would know if they were?

A. I haven't saved anything. I can't tell if anybody saved these articles or not; I never heard of them; I don't know.

Q. You never heard of them again? A. No, sir.

Q. Where is the vessel now?

A. I can't tell you; she is gone.

Q. Well, can you tell one thing?

A. She is at the bottom of the ocean.

Q. You know she is there—she is at the bottom of the ocean somewheres? A. She is not in sight.

Q. So far as you were informed and know whatever there was on the vessel was lost? A. Yes. sir.

Q. And did any of the crew or anybody belonging to your vessel save anything?

A. No, sir, they did not.

Q. Now, I want to ask you what you know about the cargo which the "Carson" carried at the time of the collision. State what you know about her carrying a cargo.

A. Well, I know that she carried a cargo of coal consisting of thirteen hundred and sixty-five tons, less two per cent, making thirteen hundred and thirty-eight tons of coal, according to the bill of lading.

Mr. McCLANAHAN.—Have you those bills of lading?

Mr. NEUMANN.—I have them in my office.

(To the Witness.) Q. You were there when that cargo was taken in? A. Yes, sir.

Q. What became of that cargo?

A. It was lost with the ship.

Q. Do you know anything of your own knowledge about the freight that was due on the cargo, of your own knowledge?

A. Well, according to the charter-party?

Mr. McCLANAHAN.—(To the Witness.) Your knowledge came from the charter-party.

Mr. NEUMANN.—(To the Witness.) You need not state anything further on that; we will introduce the charter-party. I want to ask you the reason why as was stated by you before.

(To Mr. McCLANAHAN.) We can consider that evidence in?

Mr. McCLANAHAN.—Yes, sir.

Mr. NEUMANN.—In any other case?

Mr. McCLANAHAN.—Yes, sir.

Mr. NEUMANN.—(To the Witness.) Why you gave orders to shorten the mizzen sail?

Mr. McCLANAHAN.—I object to that question as being incompetent, irrelevant, and immaterial; the matter having been gone into by Captain Piltz in his testimony in the suit brought by Hind and others against the same defendants, which evidence by stipulation *in* evidence in this suit.

Mr. NEUMANN.—I am asking him why, for what reason he gave orders to shorten the sail, why you did shorten those sails and what it was that prevented the sheets of the mizzenmast to be shortened and why you didn't allow the boom to go beyond the rail of the ship.

Mr. McCLANAHAN.—I object to that question as incompetent, irrelevant, and immaterial, and for the further reason that this evidence which was brought out in the suit of Hind and others against the Wilder Steamship Company, which evidence is now evidence in this case.

The WITNESS.—The reason why is this these sheets are not so long as they might be, on account the sails are so long, so much hoist, that naturally if the men was to slack the sails out over the rail or out to the rigging, the gaffsail, if there was lots of wind, they would swing away off forward that the gaff would break, the jaws of the gaff would break or the masthead; the mast would simply twist right off.

Q. Then from that we are to understand that it was dangerous to carry them in that way, projecting over the rails? A. Yes, sir.

Mr. McCLANAHAN.—I object to that question as irrelevant, immaterial, and incompetent, and I would ask the commissioner to allow the objection to this question on the same ground without repeating the grounds.

Mr. NEUMANN.—(To the Witness.) How was that foresail rigged with reference to the red and green lights which you carried in the spanker rigging?

Mr. McCLANAHAN.—I object to that question as being irrelevant, immaterial, and incompetent, and for the further reason that it was gone into fully by the witness in the suit of Hind and others against the Wilder Steamship Company, which evidence by stipulation is used as the evidence in this case.

The WITNESS.—Well, Mr. Neumann, I will tell you, that when the foresail was set the lights were placed so that the lights would shine underneath the foresail on an angle of ten points; if there was lots of wind the foresail would come up, it would be lifted.

Q. What then?

A. It could be seen probably high up.

Q. I will ask you this question: Could the lights *been* seen in the place between the foresail and the water line? A. Yes, sir.

Mr. McCLANAHAN.—I object to that for the same reasons, and on the ground it is leading.

Mr. NEUMANN.—(To the Witness.) Will you explain without my leading you? Explain to us how that was, what effect, if any, did the foresail have in obscuring the red and green lights?

A. It had no effect at all—no effect whatsoever.

Cross-Examination of JOHN PILTZ.

(Mr. McCLANAHAN.)

Q. In Exhibit "A" attached to your complaint you have as the first item "one black dress suit, $62." Was that what is commonly called a swallow-tail coat?

A. No, sir, it was a Prince Albert suit.

Q. Item 2, is "one black dress suit, $45." Was that a swallow-tail coat?

A. No, sir, that was a tailcoat, black cloth.

Q. Cutaway? A. Yes, sir.

Q. Where was that $62 suit bought?

A. In San Francisco.

Q. When? A. One suit I bought.

Q. Which one?

A. The black Prince Albert suit was bought in San Francisco.

Q. The sixty dollar suit?

A. Yes, sir; it was made in San Francisco. Well, it is probably a year or two ago.

Q. And you paid $62 for it? A. Yes, sir.

Q. And it was two or three years old when you lost it? A. Yes, sir.

Q. How long after you bought the suit did the loss occur? A. Well, about two years.

Q. Did it have the same value when you lost it as when you purchased it? A. I think so.

Q. Who did you buy that suit from?

A. Klein, the tailor.

Q. Where is his store?

A. On Montgomery street.

Q. Is he there now? A. Yes, sir.

Q. Whereabouts on Montgomery street?

A. Well, it was on Montgomery, above Broadway.

Q. Did you get a bill of the suit?

A. No, sir, I don't think so.

Q. How do you remember that it cost $62?

A. That is what I paid him.

Q. Are you sure of that?

A. Yes, sir; that suit of clothes was sent to me in Eureka, when I was on the "Carson." I had the measure taken when I was in San Francisco; the suit was fitted and sent up from San Francisco, to Eureka to me.

Q. Did you ever have any other clothes made by this man?

A. Yes, sir, I had some other clothes made by this man?

Q. How do you spell his name? A. K-L-E-I-N.

Q. He is a customs tailor, a man that makes clothes to order? A. Yes, sir, he used to be.

Q. You don't know that he still is a customs tailor?

A. No, sir, I do not.

Q. All of these items that you enumerate in Exhibit "A" were old items of wearing apparel, were they not?

A. No, sir; I am telling you, Mr. McClanahan, that Prince Albert suit I used to leave at home.

Q. We are now talking about the other items; were they all old?

A. No, sir, I bought some clothes here and there, right along.

Q. They were all old, you had worn everything that you had there? A. Yes, sir.

Q. And the price that you place there is the cost price?

A. Yes, sir, that is what it would have cost me to replace them.

Q. You make no deduction for the use which you had of the cost? For instance, if you had worn a suit of underwear you make no deduction for the use of the underwear—you put down the cost price?

A. Yes, sir.

Q. And you make no reduction?

A. I make a reduction in some.

Q. Tell me any of the things that you make a reduction in the price on account of the use. Here is the list. Which items have you made a deduction in because of use?

A. Well, I have made a deduction on almost everything except these two suits of clothes and the diamond studs.

Q. We are speaking of the wearing apparel.

A. Almost everything I have made a deduction in.

Q. From the cost?

A. From the cost, to the best of my ability.

Q. Why did you not do that with the suit of clothes?

A. Because those suits of clothes had not been worn to amount to anything.

Q. You had them two years and hadn't worn them any?

A. That's right; I wore them once or twice—perhaps three times. I simply used to leave a good suit of clothes home and a good overcoat.

Q. What was the cost price of the white linen shirts, the six which you have here in the exhibit?

A. Linen shirts?

Q. White shirts. I suppose they are linen, are they not? A. Yes, sir; six white shirts.

Q. Were they linen?

A. They were shirts like you wear every day.

Q. Like you have on? A. Yes, sir.

Q. What was the cost price of those shirts?

A. Well, I should judge they cost about two dollars a piece.

Q. Don't you know?

A. That is what I generally pay for a white shirt.

Q. Two dollars a piece?

A. Yes, sir, a dozen white shirts.

Q. So that you threw off fifty cents a shirt?

A. Yes, sir.

Q. You have here four shirts of red flannel underwear; what was the cost price of those?

A. Well, they cost about five and a half a pair, a suit.

Q. You have thrown off fifty cents on those?

A. Yes, sir.

Q. What would the three suits of cashmere undersuits cost? A. They were brand new.

Q. You hadn't worn them? A. No, sir.

Q. What did you pay for them?

A. I bought them in Australia, Newcastle.

Q. Answer my question.

A. That is the full value there on the paper.

Q. What was that?

A. I can't remember now.

Q. What did you make this paper up from as to those three suits of cashmere?

A. They were brand new at that time.

Q. What time?

A. When the collision occurred.

Q. You have made up that since?

A. Yes, sir, three months ago.

Q. You have made it up since the collision?

A. Yes, sir.

Q. When did you make up this list?

A. Shortly after the collision.

Q. What was your guide in placing the price on this cashmere underwear, what was your guide—your memory?

A. Simply the time was that much shorter; I remembered better.

Q. Your memory was your guide?

A. Yes, sir.

Q. Since you have made up this list you have forgotten what those cashmere did cost?

A. I can't say that I have exactly forgotten.

Q. What is it?

A. I can't tell you within a half a dollar or so.

Q. Did you guess at this price?

A. No, I don't think I did.

Q. But since you have forgotten what they cost?

A. No, sir, not exactly forgotten; I should think in the neighborhood of five dollars a suit.

Q. Just ordinary cashmere underwear?

A. It was very nice. I have got a shirt here now that is pretty near the same thing. I bought it here. I can't tell, but it is pretty near the same thing. I can't tell you what I paid for it.

Q. These dress hats that are enumerated in your exhibit, what did they cost?

A. They cost five dollars apiece.

Q. Were they old?

A. I bought them in San Francisco, just before I left San Francisco.

Q. Both together? A. No, sir.

Q. Why did you buy the second?

A. Because I wanted another hat.

Q. Was the other one worn out?

A. No, sir, not exactly.

Q. A little shaky; it didn't look as nice as the one you had?

A. No, sir, it didn't look as nice; I simply wanted a hat in Eureka. I bought it there when I was on the vessel and the other one was bought in San Francisco during my stay there.

Q. And you bought the second one because you needed it?

A. No, sir, not because I needed, but because I wanted it.

Q. Why did you buy it?

A. I wanted a new hat for Sunday.

Q. The one that you bought in Eureka that wasn't good enough to wear on Sunday?

A. Yes, the one that I bought in Eureka was the last one.

Q. The one you bought in San Francisco wasn't good enough to wear on Sunday?

A. Yes, sir, it was good enough.

Q. Didn't you buy the second hat because the other one wasn't good enough? I want to know your object in buying the second hat.

A. I liked the style of that hat.

Q. You didn't buy it because you needed a Sunday hat?

A. No, sir, not because I needed a hat, but just like you would buy a suit of clothes; you might buy it because you liked the color.

Q. What did you pay for this hat?

A. Five dollars.

Q. And you are charging this company the full value of those hats? A. Yes, sir.

Q. How long had you had them at the time of the loss?

A. Perhaps one hat I might have had six months, and the other one I had maybe seven months.

Q. What make of hat were they?

A. I can't tell you.

Q. Do you know anything about the hats?

A. No, I don't know anything particular about them.

Q. Were they stiff hats?

A. No, they were soft hats.

Q. Both of them? A. Yes, sir.

Q. Both of them the same color?

A. Yes, sir, both black hats.

Q. Both the same shape?

A. One was a little different shape, but it was a soft hat.

Q. Two diamond studs, $100, $50 apiece.

A. Yes, sir.

Q. What kind of a smoking jacket was this, Captain?

A. Well, that was a blue colored cloth, a nice looking one.

Q. Did you have it made to order? A. No, sir.

Q. Bought it? A. Yes, sir.

Q. How old was that?

A. That was bought in California; this winter last a year ago?

Q. Most of these things were bought a year or two before the collision, the clothes?

A. Yes, sir; some of the underclothes my wife made in San Francisco.

Q. Which of the underclothes?

A. Not the underclothes exactly, but some of the shirts.

Q. Didn't make any of the underclothes?

A. No, sir.

Q. Did she make any of the flannel or woolen, four woolen shirts? A. No, I don't think she did.

Q. What did she make of this list?

A. She made some stockings.

Q. Of the shirts?

A. She made some of the overshirts. You will find in the list some red shirts; she paid five dollars alone for the cloth.

Q. I find no red overshirts.

A. Let me have the list.

Q. I want you to tell me from your memory what overshirts your wife made on this list?

A. She made some on this list there.

Q. Four overshirts?

A. No, sir; two red overshirts.

Q. Are they on the list?

A. I don't know whether they are on the list or not.

Q. I find on this list no overshirts other than the shirts. Do you mean colored shirts?

A. There are some overshirts there.

Q. Those are colored shirts, aren't they? There is two red flannel shirts which I find here, the fourth item from the bottom. Your wife made them did she?

A. Yes, sir.

Q. Where did you buy the ship's leather boots?

A. In Eureka.

Q. What did you pay for them? A. $24.

Q. How long did you have them?

A. I got them in Eureka.

Q. How long had you had them when this collision took place? A. Four or five years.

Q. And you made no deduction off of the cost?

A. No, sir.

Q. One pair of leather boots and coat; where did you get them?

A. I bought them in Port Blakely, before I went on my journey.

Q. What did you pay for those?

A. Five dollars apiece for the boots and overcoat.

Q. And you make no deduction for those?

A. No, sir.

Q. One slop-chest; what was in the slop-chest?

A. Everything—stockings, rubber boots, oilskins, and everything. I simply bought the whole business in one lump sum.

Q. Did you have anything in the slop-chest that you have enumerated in this exhibit?

A. No, sir; it is a different thing altogether. It was my personal property; it belonged to me, most decidedly. That is my private account. I have got the slop-chest myself.

Q. What did you have in the slop-chest that was of the value of three hundred and eight-five dollars?

A. Everything.

Q. Tell me what.

A. Overshirts and undershirts and everything of that kind.

Q. How did you make up this value of three hundred and eighty-five dollars?

A. Because I had some clothes sent from San Francisco by Mr. Rolph.

Q. What clothes were they?

A. Well, there was a little of everything.

Q. What were they? I want you to tell me how you make up that value of the slop-chest three hundred and eighty-five dollars. A. Shirts.

Q. How many shirts?

A. I go by the value, according to what the value was when it was sent to me, when the bill was sent to me from San Francisco to Eureka.

Q. But you didn't have those bills when you made up this item? A. No, sir.

Q. How could you make it up by the bills?

A. Because I simply knew the amounts.

Q. What were the amounts that you made this item up from?

A. The amount was one hundred and eighty-five dollars, I think, and some cents.

Q. For what?

A. For the slops that were sent from San Francisco.

Q. To Eureka, to you? A. Yes, sir.

Q. You remember that as being the value?

A. Yes, sir.

Q. Now, what else?

A. And the balance I bought in Newcastle, and I paid fifty pounds for my clothing.

Q. What was it?

A. It was a little of everything.

Q. Tell me what. A. Shirts and underwear.

Q. How many shirts did you buy?

A. I can't tell you.

Q. How can you make up this item unless you know how much there was?

A. I know the value that I had aboard of the ship, what I paid for it in Newcastle.

Q. What kind of a bill did you have?

A. A bill from the man that sold me the stuff.

Q. Do you remember the amount of it?

A. Yes, sir.

Q. What was it?

A. Fifty pounds; I paid fifty pounds for slops in Newcastle.

Q. One bicycle, $50? A. Yes, sir.

Q. Was that yours? A. That was mine.

Q. Where did you buy the bicycle?

A. In Newcastle.

Q. On this trip? A. Yes, sir.

Q. What kind of a bicycle was it?

A. Jupiter.

Q. Who did you buy it from?

A. From the United States Consul in Newcastle.

Q. What was his name? A. Godding.

Q. What was his initials? A. I can't tell you.

Q. Was he a friend of yours? A. Yes, sir.

Q. He knows you, does he? A. Yes, sir.

Q. Where is he now? A. In Newcastle.

Q. What was the object of buying a bicycle?

A. Just simply like everybody else that likes a bicycle.

Q. You expected to use it?

A. I used to ride the bicycle in Newcastle, and expected to use it here.

Q. And he wanted to sell his?

A. He wanted to sell his bicycle.

Q. A second-hand bicycle?

A. No, sir, it was a new bicycle; he had just got it in Newcastle shortly before. Several of the Captains used to go out bicycle riding so, I bought the bicycle.

Q. Was he in the bicycle business?

A. Partly he was; yes, sir.

Q. An agent for this wheel?

A. A kind of an agent; he had several bicycles come out from the east, that he sold to parties there.

Q. And you paid him fifty dollars for it?

A. Yes, sir.

Q. He knows you?

A. He knows me. These Consul Generals know most of the shipmasters.

Q. Was he Consul General?

A. I think so; I would not be sure.

Q. Did you meet him there for the first time?

A. No, I met him there before.

Q. What are the sundries?

A. Small knick-knacks that a man has got aboard of his ship.

Q. How do you make up this value of the sundries?

A. Well, there is a lot of small things that a man has got.

Q. You are asking us to pay for things and you can't tell us what they are. That is not fair, is it? Tell us what those sundries are.

A. I can't tell you everything, exactly, Mr. McClanahan. I couldn't put a separate price on them.

Q. That is what I want you to do.

A. A man has got a lot of little things and I put them in at that.

Q. I want to know what they are. You might as well say that there was five hundred dollars worth. Tell us what the sundries are.

A. A lot of small things—pictures and albums.

Q. What pictures did you lose?

A. Pictures of my friends in the album.

Q. And you want us to pay twenty-five dollars for something that we know nothing about?

A. Well, I don't know whether you will pay for it or not. You don't want to pay for it—it seems that you don't want to pay for it.

Q. No, sir, not unless you can tell us what you lost. You can't tell us what those sundries consist of?

A. I can't tell you exactly; it is a lot of small items.

Q. You can't tell us what those sundries consist of?

A. Somewhere near the mark. I can't tell you exactly but it is a lot of small, little items.

Q. Did you guess it?

A. Yes, sir, I guessed; small, little items.

Q. It is purely a guess—nothing more?

A. Yes, sir, that is all; there is some items that I would have to buy, pistol bullets and things like that.

Q. How many pistol bullets did you have?

A. A box.

Q. What did they cost?

A. I don't really know what they cost.

Q. What did you put them down here for in this twenty-five dollar item?

A. I simply threw in little items in one lump.

Q. What do you figure the pistol bullets to have cost you?

A. Probably seventy-five cents or a dollar.

Q. Now, we have got seventy-five or a dollar of that twenty-five dollars, all those little items. But we want to know what they are. Have you got anything else that you want to put in?

A. There is a lot of small, little items. I can't tell you now, and I think it would amount to twenty-five dollars, all those little items.

Q. But we want to know what they are. Have you got anything else of those sundries? If you have I wish that you would let me have them.

A. Albums and pictures.

Q. Albums—how many did you have?

A. I had a whole album full.

Q. What do you value the whole album at?

A. If I had the pictures I wouldn't sell them for one hundred dollars.

Q. What is the actual value of those pictures. You put in there the whole business at simply twenty-five dollars. What was the actual value of the pictures and albums? A. I can't tell you.

Q. You don't know? A. No, sir.

Q. You can't tell me what part of the twenty-five dollars is the value that you place on the pictures and album? A. No.

Q. Is there any other thing that you can think of?

A. I can't put any value on them so far as my own personal value goes, I wouldn't sell them for one hundred dollars, a man couldn't buy them.

Q. Is there anything else that you can remember of that you lumped in this item of sundries?

A. No, sir, I wouldn't say now, except the pistol bullets.

Q. How many pistol bullets did you put in?

A. A box.

Q. We are willing to pay for that if we have to pay for them, if we have to pay for anything?

A. You don't need to pay for the pistol bullets.

Q. Then you waive the twenty-five dollars?

A. I'd just as soon give to you as not.

Q. You waive the twenty-five dollars?

A. Yes, sir.

Q. About this cash a hundred and fifty dollars?

A. That was money, money that belonged to me.

Q. Where was it?

A. That was in a writing desk.

Q. In your cabin? A. Yes, sir, in the cabin.

Q. Was it a particular fund that you had set apart for any reason?

A. No, sir, simply I had it when I left the Sound; money that I had when I left Australia after my bills was all settled; money that I had drawn after my bills had been settled.

Q. It was not then any particular sum that you had put away for safekeeping?

A. No, sir; it belonged to me, and it was charged to me, and I had to account for it.

Q. By whom? A. By the owners of the ship.

Q. It was money that you had received from the crew?

A. Not from the crew; I had drawn over and above my bills, simply when the bills was paid.

Q. You remember it was a hundred and fifty dollars?

A. Yes, sir.

Q. And you took this hundred and fifty dollars and put it in the desk in your cabin? A. Yes, sir.

Q. And that is where it was? A. Yes, sir.

Q. Don't you want to make some deduction from your claim for the wear of some of these articles that you charged the cost price for after having used them for some time?

A. No, I don't think so; I think I have deducted all that I ought to deduct, or anybody else.

Q. What have you deducted from any of these items?

A. Well, I have put the price that we couldn't buy the stuff now.

Q. Have you made any account for the time that you have used the stuff? A. No, sir.

Q. You have only mentioned three suits of new cashmere underwear?

A. There is some other underclothes that I never had on, some white shirts; some of those shirts that I never had on.

Q. Why didn't you charge two dollars apiece?

A. I couldn't buy them for that.

Q. Why did you charge two dollars apiece?

A. Because I bought a half a dozen shirts.

Q. And some were perfectly new, that you never had on? A. Yes, sir.

Q. How many? A. I can't tell you.

Q. More than one?

A. There is no use asking me, Mr. McClanahan; I can't say.

Q. If there were two, why didn't you charge two dollars for them?

A. I can't tell you; I can't answer that question; it is no use for you asking me on that point about the white shirt; I can't answer that question.

Q. You say that those white shirts would cost you two dollars apiece to buy? A. Yes, sir.

Q. In the first part of your examination, you said that you had thrown off fifty cents apiece for those shirts, why didn't you charge two dollars for the other that had not been used?

A. Well, I suppose I might have put two of them; I might have got two dollars for two of them, but to take

it; I took it for a lump sum, and it would amount to two dollars apiece.

Q. Why didn't you charge the price that you would have to pay for new shirts?

A. I simply put them in the whole lot; I put them in at a dollar and a half.

Q. Didn't you charge two dollars for the new ones?

A. I simply threw off for the wear and tear of the shirts I had worn; I can't tell you if I have worn three or four shirts.

Q. What other new wearing apparel was there that you had never used before?

A. There was some linen, clothes that had never been on my body.

Q. Linen suits? A. Yes, sir.

Q. Never had those on? A. No, sir.

Q. Anything else?

A. There is some underclothes, some new cashmere underclothing that had never been on my body.

Q. Anything else? A. Stockings never been on.

Q. Anything else?

A. I don't know that there is anything else of the underwear.

Q. All the other items you have had on?

A. Yes, sir; maybe there is others that I don't know that I never had on, and there may not be.

The further hearing of this case is continued until the 3d day of December, 1900, at 10 o'clock A. M.

Third Day, Dec. 3d, 1900.

Morning Session.

Mr. McCLANAHAN.—I will continue reading the deposition:

Q. Whose eyeglasses were these?

A. They belonged to my wife.

Q. Trying to collect for them in this suit?

A. Yes, sir.

Q. What about the navy blue outing suit?

A. That belonged to my wife.

Q. What about the black brocaded silk suit?

A. That belonged to my wife.

Q. Piece of black silk?

A. Yes, sir, that belonged to my wife.

Q. One black crepe dress? A. Yes, sir.

Q. Belonged to your wife? A. Yes, sir.

Q. One plain black skirt; that belonged to your wife?

A. Yes, sir.

Q. One fur boa; that belonged to your wife?

A. Yes, sir.

Q. One fur cape; that belonged to your wife?

A. Yes, sir.

Q. Two black satin waists? A. Yes, sir.

Q. Belonged to your wife? A. Yes, sir.

Q. One black jacket, did that belong to your wife?

A. Yes, sir.

Q. One piece of serge; did that belong to your wife?

A. Yes, sir.

Q. Two pongee silk wrappers, did they belong to your wife? A. Yes, sir.

Q. Four calico wrappers; they belonged to your wife?

A. Yes, sir.

Q. Three shirt waists; they belonged to your wife?

A. Yes, sir.

Q. One dozen chemises, did they belong to your wife?

A. Yes, sir.

Q. One dozen pair of drawers, did they belong to your wife? A. Yes, sir.

Q. I will now read down the contents of Exhibit "A," and ask you the general question covering all that I read: Twenty-four pairs of stockings, two pairs of shoes, one hat, six night dresses, corsets, three white undervests, corset covers and dressing jacket, two silk undervests, four colored undervests, one gold bracelet, one watch-chain, two mackintoshes, two silk umbrellas, two dozen handkerchiefs, two blankets, one crocheted bedspread and sham, four feather pillows, one down quilt, one feather bed, one dozen napkins, one dozen napkins, two sofa pillows, one pair of slippers, four sets of flannel underclothes, one opera glass, one dozen bed sheets, one dozen pillow cases, one Singer sewing-machine, two brooches, and sundries; did they all belong to your wife?

A. Well, the blankets belonged to us both; we used to sleep under them.

Q. Who did they belong to?

A. To the both of us.

Q. Your wife shared in the ownership of the blankets?

A. Yes, sir; of course, she might have bought them, but my money paid for them.

Q. Your money paid for them? A. Yes, sir.

Q. But they belonged to you and your wife?

A. Yes, sir.

Q. Anything else that belonged to you and your wife in the list that I have read?

A. Yes, sir, everything; except there is a mackintosh there that didn't belong to us.

Q. The corsets didn't belqng to your wife?

A. No, sir.

Q. What things did belong to you and your wife?

A. Well, the pillows and the sheets and everything.

Q. You have no pillows down here; now confine yourself to things that are down here, the things that you have enumerated belonging to you and your wife?

A. Anything outside of the women's apparel.

Q. Well, that I want you to tell me?

A. Anything outside of the woman's apparel; that is, as far as sheets, blankets and pillows.

Q. So far as they are mentioned, they belong to you and your wife?

A. Yes, sir; I gave her the money and she paid for it.

Q. And gave it to your wife? A. Yes, sir.

Q. And she bought it? A. Yes, sir.

Q. Your money paid for it; then it is not yours?

A. Yes, sir; that's right.

Q. Anything else that you think of that belonged to you and your wife?

A. No, sir; of course, everything that belongs to my wife my money pays for.

Q. That is, you buy the things and give them to your wife? A. She buys them.

Q. She buys them and they are hers?

A. My money pays for the stuff; I didn't go in with her to the store when she buys a dress.

Q. Where did you get the value of these things?

A. My wife put it up.

Q. Are they the cost value, the cost price?

A. No, sir; I don't think so.

Q. Over cost? A. No.

Q. Under cost? A. Yes, sir.

Q. All of them? A. More or less.

Q. Let me ask you a question or two. The foresail of the barkentine "William Carson"—in your testimony before, you testified that the lights were placed twelve feet and six inches above the deck on the spanker rigging; you testified that the foot of the foresail was twelve feet above the deck at that point; now tell me how it was possible for that light, then, to shine straight ahead?

A. Mr. McClanahan, a ship's bow is bound to be lighter than the ship's stern, and naturally the forward end of the ship is higher than the stern of the ship, and that will give it a raise so that the lights will show underneath the foresail on a clear night around the horizon.

Q. Suppose the ship at the bow dipped as ship's do, that is, lift on the waves, doesn't the ship then go up and down, the bow go down and the stern go up?

A. Yes, sir.

Q. Under these circumstances, could that light shine straight ahead, if that foresail was square across the beam? A. Yes, sir.

Q. How would it?

A. I don't think it would dip enough to hide the light.

Q. It would have to dip how much in this particular case in order to hide the light?

A. I would take a good many feet.

Q. How many feet?

A. I cannot answer that question.

Q. Five feet? A. I can't answer that question.

Q. Two feet? A. I can't answer.

Q. It would dip so that it would hide the light?

A. I don't think so.

Q. Why not?

A. Because if there is wind enough for the ship to dive like that the foresail would stand away up, it may be plumb up to the forestay; well, it might be in an angle like that (showing); the foresail might extend in this direction (showing).

Q. Don't you have a sea without wind sometimes?

A. Yes, sir.

Q. Now, under these circumstances, a sea without wind, why couldn't the ship dip in riding that sea so as to hide that light?

A. When there is no wind and heavy sea on the foresail is hauled plumb up under the yards.

Q. There wasn't much sea on that night of the collision? A. No, sir.

Q. Much swell? A. A heavy roll or swell.

Q. She would dip in this heavy roll, wouldn't she; she would dip in the heavy roll?

A. No, sir; she was broadside on the roll, more or less.

Q. But suppose she wasn't broadside, would she dip?

A. I can't tell; I don't think she would dip much.

Q. Not enough to hide the light? A. No, sir.

Q. Do you remember when in this court testifying that if a man was over six feet tall, that he would have to look under the bottom of the squaresail in order to see the light on the starboard side? A. Yes, sir.

Q. Is that true or untrue?

A. Well, that is true.

Q. If a man, in order to look under the boom, a man seven feet high would have to stoop? A. Yes, sir.

Q. He would have to look under the boom?

A. Yes, sir.

Q. He couldn't see if he did not?

A. No, sir, he coudn't see unless he stooped.

Mr. NEUMANN.—Here is an exhibit that belongs to the other side. I see that it was filed by the respondent. It was a marine protest. Of course, I won't introduce it. I am prepared to rest, with the exception of a chart that I may desire to offer.

Here libelants rest.

The COURT.—Rest in both cases?

Mr. NEUMANN.—Yes, sir.

Mr. McCLANAHAN.—I want to ask the privilege of introducing oral testimony, perhaps, even though I am not through with the written testimony?

The COURT.—Yes, sir; take any course you wish.

Mr. McCLANAHAN.—I will now read the testimony of James Lyle, which is as follows.

Testimony of JAMES A. LYLE, called for libelee; sworn.

Mr. McCLANAHAN.—Your name is what?

A. James Alexander Lyle.

Q. You live in Honolulu? A. Yes.

Q. What is your business?

A. Ship wrecker and all kinds of ship work.

Q. Have you taken any measurements of the "William Carson"? A. Yes, sir.

Q. State when you took such measurements?

A. I will have to look it up, I don't remember the day, I marked it down.

Q. At the time that you took the measurements?

A. Yes.

Q. Have you that paper?

A. Yes; March 30th, Friday, this year.

Q. What measurements of the "William Carson" did you take?

A. I took the height of the saddle, poop deck.

Q. Wait a moment, the height of the saddle what?

A. On the main mast.

Q. What was the height?

A. Five feet seven inches. Next measurement was the poop deck above the main deck, 7 feet, 7½ inches.

Q. Did you take the height of the saddle of the mizzenmast? A. No.

Q. What was the next measurement?

A. The quarter deck from the main deck, 5 feet 3¼ inches.

Q. What was the next measurement?

A. To the top of the poop 2 feet four inches, the cabin I mean.

Q. What is the measurement from the quarter deck to the house deck? A. 2 feet 4 inches.

Q. What was the next measurement?

A. The beam at the jiggermast outside.

Q. What is it? A. 35 feet.

Q. What is the next measurement?

A. The deadeye above the house deck, 1 foot 7 inches.

Q. What is the next measurement?

A. Deadeye above chock 11 inches.

Q. What was your next measurement?

A. The main yard from the truss to the top of the house, 26 feet.

Q. What was your next measurement?

A. Height of the forecastle deck above main deck, 6 feet.

Q. What was your next measurement?

A. The widest part of the forecastle deck inside of chock, 38 feet.

Q. What was your next measurement?

A. Length of the foreyard between the shive hole, 76 feet 10 inches.

Q. What was your next measurement?

A. Yardarm from the shive hole is 2 feet. On each end of the yardarm it is two feet.

Q. That measurement is the measurement on each end of the yardarm? A. Yes.

Q. What was your next measurement?

A. The cathead outside of the chock, 2 feet 8 inches.

Q. What is your next measurement?

A. The spanker mast I measured in here, 76 feet.

Q. What is the next measurement?

A. That is all.

Q. Will you come down from the witness stand. Take your measurements there and explain to the Court from this model, if you can, what the technical terms mean.

A. The first one is the height of the saddle. I took the height of the saddle from the deck up to here. This is the saddle.

Q. What is the next measurement?

A. The poop deck above the main deck. I took the height from the top here down to this main deck. First, I took this height and then took that height. The whole height from the main deck to the top of the cabin was 7 feet 7½ inches. This quarter deck is 5 feet 3½ inches above the main deck. The cabin is 2 feet 4 inches above the quarter deck.

Q. What is the next measurement?

A. I took the height of the deadeyes, this is where the rigging is made fast. The height of the deadeyes above the house top, 19 inches.

Q. What is the chock?

A. This piece running along here, and the top of the deadeye is 11 inches above the chock.

Q. What is the next measurement?

A. The main yard truss to the top of the house. This yard is broken off here and I made it from the truss with the arch swinging to the top of the house.

Q. The next measurement is what?

A. The height of the forecastle deck. I took the height from the top here to the main deck, 6 feet.

Q. What is the next measurement?

A. The widest part of the forecastle deck inside of the chock, that is, inside of the chock, 38 feet.

Q. What is the next measurement?

A. The cathead there.

Q. You have not gotten to the cathead yet? The foreyard?

A. The foreyard, I took the length from the sheer pole to here, that is where the chain that hauls the sail up comes up through here. The yard there between those two points is 76 feet 10 inches.

Q. What is the next measurement?

A. On the end of the yard here, it is two feet out.

Q. What is the next measurement?

A. The cathead, it stands 2 feet 8 inches outside of the chock.

Q. Is that all of the measurements that you made?

A. The spanker mast. I took the length from the deck to the under side of the trestle case, 76 feet.

Q. You may now take the witness stand again. Did you or not make any measurements of the rigging of the "William Carson"? A. No, sir.

Q. Those are all of the measurements that you took?

A. Yes, those are all of the measurements that I took.

Q. Did you make any measurements of the sails?

A. No.

Q. I would like to ask you what, if anything, you did with those measurements?

A. I got those measurements and gave them to you.

Q. When did you give them to me?

A. The day after I took them, I could not tell you, the 21st, I think.

Q. Did you give them to anyone else?

A. No, only to you.

Q. Didn't you give these measurements to Mr. Johnson?

A. No, we talked over the measurements together, and I don't know what he took down, but I wrote a note to you, I did not write any note to Johnson.

Q. What was the talk with Johnson?

A. We were looking at the model, and he wanted to see whether the measurements agreed with the model.

Q. Did they agree with the model?

A. Yes, the most of them.

Q. Show us the measurements that did not?

A. I guess the measurements all agreed, but there were some little things here. He had this thing cut off, this rail here.

Q. I am talking about this model?

A. I never saw this model before. It was another model that I talked with him about. I gave him the measurements for that.

Q. Were the measurements you gave for that model the same as the measurements you have read out in court? A. Yes.

Mr. McCLANAHAN.—I will now read the testimony of W. A. Johnson.

Testimony of W. A. JOHNSON, being duly sworn testified as follows:

Direct Examination.

Mr. McCLANAHAN.—What is your business?

A. Marine Engineer.

Q. Employed by whom?

A. The Wilder Steamship Company.

Q. State if you can under whose instructions and directions and superintendence this model was constructed? A. Under mine.

Q. From where did you get the measurements?

A. Some of the measurements out of the United States Record.

Q. Where did you get the others?

A. Some I took myself and Mr. Lyle gave me some.

Q. What measurements did you get from the United States Records, and what do you mean by the United States records?

A. I mean the United States blue book furnished by the American Consul, being the length, breadth, and depth.

Q. What is the scale on which this is drawn?

A. A quarter of an inch to a foot.

Q. A quarter of an inch to the foot? A. Yes.

Q. What is the model scale in length?

A. I think approximately, 208 feet.

Q. What is the length given in the blue book.

A. In the blue book it is 194 feet 8 inches.

Q. From what is that measurement taken?

A. From inside of the stern to the fore side of the stern post at or about the line of the upper deck.

Q. And the difference between the measurements of the blue book and the measurement of this model here is what?

A. Is the actual length, not knowing the overhanging of the vessel, being part of the vessel overhanging from the stern to the bottom.

Q. Show up by this model what you mean by the overhanging of the vessel.

A. Assuming that this is the stern post, this portion overhanging and the same way forward. Assuming that is the stem, this is overhanging portion. Those measurements are only approximate.

Q. Based on what? A. Based upon judgment.

Q. And your knowledge of boats? A. Yes.

Q. Did you get the beam of the "William Carson" in the blue book? A. Yes.

Q. Does or does not the beam correspond with this model? A. Approximately, yes.

Q. Why not exactly?

A. Because I didn't know the tumble home of the ship's sides.

Q. Does the tumble home correspond with the overhang?

A. No. In some ships there are parallel sides, and some have tumble home.

Q. Show the Court what you mean by "tumble home"?

A. A ship that is tumble home is up at this angle, and I don't know whether this ship was tumble home or not. This model is wall sided. If perfectly straight she is wall sided.

Q. What measurements did Mr. Wall give to you?

A. Mr. Lyle gave to me the height from the main deck to the top of the quarter deck.

Q. What was that? A. 5 feet 3 1-2 inches.

Q. Come down off of the witness stand and point that out as you have testified.

A. From here to there.

Q. What was that height? A. 5 feet 3 1-2 inches.

Q. Does this model scale that?

A. Yes, then he gave me from the height of the quarter deck to the top of the cabin from here to there.

Q. What was that? A. 2 feet 4 inches.

Q. Does that model scale that? A. Yes.

Q. What was the next measurement?

A. The top of the deadeyes; the top of the deadeyes above the cabin deck.

Q. Show the Court that place?

A. From here to there, the measurement being 19 inches to the top of the deadeye.

Q. That model scale that?

A. Practically so, although allowed to the center of the eye and not to the top.

Q. What is the next measurement?

A. The next measurement was the height of the chock; 8 inches. That is this.

Q. Does the model scale that? A. Yes.

Q. What is the next measurement that was given by Lyle?

A. From outside of the ship to outside of the ship at the forward side of the jiggermast.

Q. What is that?

A. That is this measurement across here.

Q. What was that measurement? A. 35 feet.

Q. Does the model correspond with that?

A. Yes.

Q. What was the next measurement?

A. From the yard from the truss to the top of the forward house.

Q. Point it out on the model? A. There 26 feet.

Q. Does that model correspond with that measurement? A. Yes.

Q. What was your next measurement?

A. Aft side of the gallant forecastle. 38 feet.

Q. Does the model correspond with that measurement? A. Yes.

Q. What was your next measurement?

A. The length of the cathead outside of the vessel, 2 feet 8 inches.

Q. Does the model correspond with that?

A. Yes, the next, the length from the yard from the shive head to shive head, 76 feet, 10 inches. The model corresponds with that. The next measurement was the extreme length here, 80 feet, 10 inches.

Q. Of the yards? A. Yes.

Q. Does the model correspond with that measurement ?

A. Yes. The next measurement was the height of the mast from the main deck to the under side of bolster.

Q. Point that out on the model?

A. From here to there.

Q. What was that measurement? A. 76 feet.

Q. Does the model correspond to that measurement?

A. Yes.

Q. What was your next measurement?

A. My next measurement, which Mr. Lyle did not give me, and which I assumed and which is all in favor of the ship, was that she had 4 feet, 3 inches free board. That is assumed.

Q. What does that mean?

A. So much side out of the water.

Q. That would be the measurement from the deck itself to the water line? A. Yes.

Q. Are those all of the measurements that you have?

A. No, I have some of my own. That is all that he gave me.

Q. Tell the Court what measurements you yourself took.

A. The length of the mizzen in the main boom.

Q. What was that length? A. 37 feet.

Q. How many feet? A. 37 feet.

Q. Does the model correspond with that?

A. Yes.

Q. What was your next measurement?

A. The length of the mizzen and main gaff.

Q. What is that length? A. 35 feet.

Q. 25 feet? A. 35 feet.

Q. Does the model correspond with that measurement? A. Yes.

Q. What was your next measurement?

A. The length of the jigger boom, 54 feet, 6 inches. The model corresponds with that measurement.

Q. What was your next measurement?

A. The distance between the masts, approximately.

Q. What was that measurement?

A. Approximately, it is 40 feet.

Q. How much? A. 40 feet.

Q. What is the next measurement?

A. Fore and aft sails. I measured in the loft myself, and the sail maker measured them.

Q. Does the model correspond with the measurement of the sails? A. Yes.

Q. What were the measurements?

A. 30 feet on the head, 33 feet on the foot, height about 52. Of course those sails would be stretched probably more than that.

Q. What was your next measurements?

A. Height of the light boxes at the bottom of the box above the main deck.

Q. What is that measurement? A. 16 feet.

Q. Does the model correspond with that measurement?

A. I will see if the boxes are not loose. If they are, I will have to set them.

Q. Does the model now correspond to that measurement? A. Yes.

Q. Did you make any other measurements?

A. The height of the saddle on the mizzenmast?

Q. What was that height? A. 7 feet.

Q. Does the model correspond with that measurement? A. Yes.

Q. Any other measurements? A. No.

Q. Take the witness-box. What is the drop of this squaresail, according to the model? A. 20 feet.

Q. And does that leave any space between the forecastle and the bottom of the sail?

A. The top of the house and the bottom of the sail?

Q. Yes. A. 6 feet.

Q. That would be from here to there? A. Yes.

Q. Where did you get that measurement?

A. From the judgment of the sailmaker. Do you mean the height?

Q. The drop of the sail?

A. From the judgment of the sailmaker. That is, I told him to stop at that. He said it should have come lower.

Q. He said it should have come lower, but you told him to stop at six feet? A. Yes.

Q. What is the width of the squaresail, its full width at the widest point? A. That I don't know.

Q. Will you please scale it here? A. 74 feet.

Q. What is its width at its narrowest point?

A. 57 feet.

(Respondent offers in evidence at this stage of the case model concerning which the witness has been giving testimony, and marked by the clerk Exhibit "B.")

Mr. McCLANAHAN (to the Court).—I do not desire to offer it at this time, for I want Mr. Johnson to rescale it upon the starboard side; we do not know whether these boxes were loosened or not, but we would like to rescale that box and then have the clerk seal it with sealing wax, and then offer the model in evidence.

The COURT (to Mr. McClanahan).—Pursue your own course.

Mr. NEUMANN.—We object to the introduction of the model.

The COURT.—I think it is admissible for what it is worth.

Mr. McCLANAHAN.—Did you superintend the construction of this other model? A. Yes.

Q. What is the scale of that model, the "Claudine" model?

A. A quarter of an inch to the foot, the same as the "William Carson" model.

Q. The length of that boat, on that scale, is the length of the "Claudine"? A. Yes.

Q. And its beam is the beam of the "Claudine"?

A. Yes.

Q. Is the height of the bridge to the scale?

A. Yes.

Q. And corresponds to the bridge of the "Claudine"?

A. Yes.

Q. The height above the deck? A. Yes.

Q. And the distance aft, does that correspond with the "Claudine"? A. Yes, sir.

Q. Are those lights in accordance with the lights of the "Claudine," as placed on the boat, those sidelights?

A. Yes.

Q. And here from the masthead, is that according to the scale? A. Yes.

Q. Are those gangways on either side of the bridge according to the scale?

A. Yes, they are according to the scale of the original gangways, of which presumably these are the same. One is the original gangway and one is a new one.

Q. Is the cabin space here according to scale?

A. Yes.

Q. Fore and aft? A. Yes.

Q. What do you call this little opening over the stern here? A. Fantail.

Q. Is that according to scale? A. Yes.

(Respondent offers in evidence the model of steamer "Claudine," as testified to by the witness.)

Mr. NEUMANN.—We object to that, for the same reason.

The COURT.—I think it is admissible.

(Marked Exhibit "C.")

Cross-Examination of W. A. JOHNSON.

Mr. NEUMANN.—You say the height of the light boxes on the "William Carson" from the deck are 16 feet? A. Yes.

Q. Please show to the Court from what part of the "William Carson" you measured that. Kindly show to the Court from where you took that 16 feet?

A. From the main deck.

Q. From the main deck inside? A. Yes.

Q. What is the distance from the main deck to the railing? A. To this here?

Q. To the railing on the top?

A. No height given.

Q. No height given to that? A. No.

Q. From the main deck up to where the lights are fixed it is 16 feet? A. To the bottom of the boxes.

Q. What is the height of the box?

A. I don't remember the height of the box; I did not measure that.

Q. What part of the vessel do you call that right below the railing there? A. This?

Q. On the side there that is the chocks?

A. That is the chocks.

Q. How far above the chocks are those lights fixed?

A. They are a little less than eight feet.

Q. Was the mast in the vessel when you measured that distance? A. No, the mast was ashore.

Q. How could you tell whether it was that distance from it?

A. From two measurements. One from the rigging down to the position of the light boxes, and one from Mr. Lyle's measurement from the deck up. The two measurements corresponding within half an inch of one another.

Q. How did you make your measurement from the rigging?

A. I made it; we have the rigging in our possession.

Q. The spanker mast was taken out?

A. The mizzen mast was cut out of her.

Q. And with the rigging taken ashore? A. Yes.

Q. Where were the light boxes with reference to that?

A. The light boxes, when I took the measurements were off the rigging.

Q. How could you tell where they were?

A. The sizing of the lights or the marks of the sizing were there, and also the marks of the light boxes on the rigging.

Q. What marks were those of light boxes on the rigging?

A. The marks of these, and the marks on the bottom of the box on the wire rigging. It was protected.

Mr. McCLANAHAN.—I will now read the testimony of—

THOMAS MASON, being duly sworn, testified as follows:

Mr. McCLANAHAN.—What is your business?

A. I am a laborer on the wharf.

Q. Have you had anything to do with the barkentine "William Carson"? A. Yes, sir.

Q. What have you done?

A. I went out there to have those booms and things saved and taken out.

Q. You went under the water to get them out?

A. I went down as far as the boom under the water?

Q. What is this tackle that holds the boom?

A. It is called the sheet.

Q. What is this tackle on this side that holds the boom out? A. The boom guy.

Q. Will you tell the Court what you did, if anything, with the boom sheet or the boom guy, of that boat when you went out?

A. I went down and unloosened the sheet of the boom.

Q. Here? A. Yes.

Q. Was it slack or taut? A. It was taut.

Q. Did you see the boom guy at that time?

A. I saw the boom guy was taut.

Q. Will you come down here and show to the Court in what position the boom was when you saw it, both the boom guy and the boom sheet being taut?

A. This boom sheet was taut, and the boom guy was taut, and I unloosened the sheet here from this cleat here, and it went up and the boom was that way.

Q. With the boom guy taut also? A. Yes.

Q. What became of the boom guy?

A. When I loosened this of course that went slack, and when I got up we sent a native to go and cut this thing so this boom would float so that we could get to work at it.

Q. Was this boom guy when you saw it taut touching the rigging or not? A. No.

Q. It was taut outside of the rigging was it?

A. Yes.

Q. Can you tell us about how far the boom was extended over the rail?

A. About how far, about that far.

Q. About like that? A. Yes.

Q. Would that be a quarter of the boom outside of the rail? A. Yes, it might be.

Q. Would it be a quarter from where the rail comes up and strikes the boom at the end of the boom?

A. Yes, it would clear all of this part here. It would clear this block here.

Q. The block to which the boom guy is placed would be clear over the rail? A. Yes.

Q. What is that fastening?

A. It is a sheet block.

Q. Would that sheet block be inside of the sail fastened to the boom? A. Inside of the foot of the sail.

Q. That sheet block was over the rail? A. Yes.

Q. How much over the rail, a foot?

A. Two feet over the rail.

Q. Take the witness stand please. Do you remember how much of the sheet was wrapped around the cleat?

A. No, I did not take notice of many turns there were.

Q. But it was more than one turn?

A. Yes, more than two turns.

Q. But you cannot testify as to how many turns there were? A. No.

Q. You are sure that you saw the boom guy?

A. Yes.

Q. Are you sure that it was taut?

A. It was taut.

Q. You are sure it did not touch the rigging?

A. No.

Q. And was outside of the rigging?

A. Yes, it was outside of the rigging.

Q. Where was the other end of it fastened, the forward end? A. Fastened forward.

Q. To the rigging of the mizzen mast? A. Yes.

Q. You are sure about that?

A. Yes, I am sure about that.

Q. Could you see this boat as she lay under water from above the water?

A. Yes, her stern was out of the water.

Q. You could see her?

A. Yes, I could see her plainly.

Q. After you came up you could see the boom rope, could you? A. Yes, sir.

Q. Where was that boom guy fastened forward?

A. Forward to the masthead.

Q. What mast, come and point it out on the model?

A. The boom guy was fastened here.

Q. You are pointing to the second mast, are you?

A. Yes.

Q. That would be a little abaft the rigging of the second mast? A. Yes.

Q. Do you know what became of the boom guy?

A. The boom tackle we took away.

Q. You took it up? A. Yes, we took it up.

Q. If that boom had been inside the rail would the boom guy have touched the rigging?

A. It would have chafed the rigging.

Q. Come down and show the Court what you mean by that?

A. If that boom was there, it would chafe this rigging by this guy.

Q. If the boom was inside of the rail it would chafe the guy? A. Yes.

Q. The guy would chafe the rigging? A. Yes.

Q. That would be so anywhere inside of the rail?

A. It would be inside of the rail.

Q. Any where inside of the rail. A. Yes.

Q. I wish you would come from the stand again and fasten this sheet here in position to show where the boom was when you saw it, with both sheet and guy taut?

A. That is the way it was.

Q. That is the way it was when you saw it?

A. Yes.

Cross-Examination of THOMAS MASON.

Mr. NEUMANN.—When did you first see that?

A. When I went out to take these things out.

Q. When was that, when did you first go out there?

A. The first time that I went out was when I was working for Captain Clark, and he took me out when the ship was anchored where the two buoys were.

Q. When was that?

A. I have forgotten the date, I don't remember the date.

Q. When did you first hear of this collision, when did you hear that the ship was sunk?

A. When I heard it was when Captain Clark took me out there.

Q. When did you hear it first?

A. I could not tell you the date.

Q. Do you know when this collision took place between the "Claudine" and the "Carson"?

A. I heard the "Claudine" struck the vessel and she got sunk and was towed in.

Q. You don't know what day it was after she was towed in? A. No.

Q. How many days after this collision took place between the "Claudine" and this vessel was it that you were taken there by Captain Clark?

A. About two months.

Q. Two months? A. Yes, about two months.

Q. Are you sure there was a guy to that sail?

A. Yes, a boom guy.

Q. And where was that boom guy fastened?

A. The way it is now.

Q. Where was the end of it fastened, come down and show the Court where it was fastened?

A. This here?

Q. I mean the guy?

A. The guy was fastened there, there was a kind of a ring there, and there is a thimble that goes in and fastens there, and the other end is tackled there and fastened to this. I hauled this boom out.

Q. You say that might have been a month after the collision took place?

A. No, I said about two months after.

Q. You first went there for the purpose of examining it?

A. It was two weeks out there when Captain Clark took us out and from that time to this time about two months.

Q. How long since that time since you first saw the vessel?

A. It was a week out there when we first went out.

Q. Who had charge of her during that week?

A. Captain Clark.

Q. Of the Wilder Steamship Company? A. Yes.

Q. Did the captain or any of the crew of the "William Carson" stay there? A. No.

Q. The exclusive possession of the whole thing was in Captain Clark's hands? A. Yes.

Q. How do you know who fixed that sail in that way?

A. I don't know who fixed it in that way.

Q. You only know that about a week afterwards you found it fixed in that way? A. Yes.

Q. Was it perhaps necessary to fix it in that way when they wanted to take the mast out?

A. They took the sail out and left the mast there in that way.

Q. Do you know who put the guy in there?

A. I don't know, it might be the sailors of the ship.

Q. Might it be the people who wished to take the sail out? A. No.

Q. Why not?

A. Because they were not there, the boys went out and took the sail out.

Q. But you don't know what was done within the week; you were not there for a week afterwards?

A. There was nobody went out except old man Clark and ourselves.

Q. You went out a week after the collision?

A. Yes.

Q. Who was in possession of the boat during that week? A. I don't know.

Q. You cannot tell? A. No.

Q. From all you know Captain Clark may have been there? A. He was out there?

Q. Do you know what vessel first took hold of the sunken ship? A. The "Lehue."

Q. When was that? A. I could not tell you.

Q. It was before you went there? A. Yes.

Q. All you know is that you found this guy there in the condition you said? A. Yes.

Q. Can you swear that guy was on there at the time she sunk? A. I could not swear.

Q. You cannot? A. No, sir.

Mr. McCLANAHAN.—I will now read the testimony of—

WILLIAM H. MASON, being duly sworn, testified as follows:

Mr. McCLANAHAN.—Is Thomas Mason your brother? A. Yes.

Q. Do you remember of visiting the "William Carson?"

A. Yes. I was working there.

Q. Do you remember the occasion of the taking off of the fore and aft sails? A. Yes.

Q. Did you see the sails before they were taken off?

A. Yes.

Q. Were you under or above the water?

A. I was under the water and above the water both.

Q. At that time?

A. At the time we were taking the sails off, I got down there and helped to cut the gearing away and the tackle.

Q. Could you see the gear and the tackle from above the water?

A. Yes, from the top of the water very plainly.

Q. Was the sheet attached to the boom of the mizzen mast loose or taut? A. It was taut, sir.

Q. Was the boom pennant loose or taut?

A. Taut, sir.

Q. How do you know?

A. Because we saw it from the top, we saw how the boom was guyed out.

Q. Did you see the boom?

A. Yes, of the mizzenmast.

Q. Come down here and show us the mizzenmast?

A. This one.

Q. This boom to the mizzenmast you could see.

A. Yes, right from here.

Q. Was it inside or outside of the rail?

A. Just as it stands now.

Q. When did you first see this model?

A. When I got out there.

Q. This little thing?

A. This morning is the first time I saw it.

Q. In my office? A. Yes, in your office.

Q. When you saw that boom you say the sheet was taut? A. Yes.

Q. And the guy rope was taut? A. Yes.

Q. And the boom was at about that angle?

A. Yes, at that angle.

Q. Was this block inside or outside of the rail?

A. This block was there in the boom outside as it is now.

Q. Outside of the rail? A. Yes.

Q. And the block itself, is it beyond the foot of the sheet, or inside of the foot of the sheet?

A. It was about there.

Q. Inside of the foot of the sheet? A. Yes.

Q. Take the witness stand again. Did you notice the mainmast boom?

A. The mainmast boom was where we could not see very plainly, because it was a little more under the water than these two booms, because the vessel was lying down and the after part was down with the stem down like this.

Q. How far under water was the boom of the mizzenmast.

A. You can see right along up to about here on the upper rail, here very easily, because this was up out of

the water so much. It kind of laid down like this. You could walk right up almost to this rigging dry.

Q. From what point could you see that guy and sheet?

A. Right from here, sir, because we drove off from here off our boats.

Cross-Examination of WILLIAM H. MASON.

Mr. NEUMANN.—When did you first see the vessel?

A. When I went out with Captain Clark the first day that I went to work. I put in a week with him. I could not say the day.

Q. Do you know how long it was after the collision took place?

A. I think it was a week or so after the vessel was brought up.

Q. After the "William Carson" was brought up to where she now is? A. Yes.

Q. Could you say to the Court when the "Carson" was brought up there?

A. I could not say the day of the month.

Q. You cannot say how long it was before you first saw her after the collision?

A. It was about a week I think.

Q. Why do you think it is a week?

A. Because they were working on it long before I went to work—they were pulling on it.

Q. Who was working there?

A. Daniel King I believe was the first man who went out with Captain Clark and the tug, and another native.

Q. How long afterwards was it that you went out?

A. I should reckon about a week after they moored the vessel.

Q. How long did the other men work there?

A. I could not say; I think they went to work the morning after the vessel struck.

Q. How many days did they work on her?

A. I think it must have been three or four days. I don't know myself, because I was working on other boats at the time.

Q. Can you tell us about what time elapsed between the collision and the bringing in of the boat where she is now lying at anchor. The collision was on the 27th of December? A. Yes.

Q. What time elapsed before they got her to where she is now lying?

A. I could not say very well, because I was not lying there.

Q. The time is not fixed in your mind of how long it was after?

A. It was a week I know after they come after me to go to work.

Q. A week after they got her moored where she now is? A. Yes.

Q. You had nothing to do with her before that?

A. No.

Q. Do you know of your own knowledge what vessel first came to secure her?

A. The tugboat "Elue" was the first boat that went to her assistance, and then the "Lehue."

Q. How long did the government tug work there?

A. I could not say how long she worked there.

Q. How many days was consumed by the "Lehue"?

A. I could not say that; I know that the "Kinau" was there.

Q. Was not the "Iriquois" there?

A. Yes, and I believe the same day the "Elue" went out. I was on the wharf the night she came back.

Q. Did you know she had been out there trying to bring in the vessel?

A. I only heard she was out there.

Q. How long was it after the collision that you heard that?

A. On the same evening as the collision.

Q. You cannot tell how long it took place before they brought her in? A. No.

Q. You were attending to other work?

A. Yes.

Q. Speaking of the condition of the mizzenmast boom. Do you know who placed that sail in the position in which you found it.

A. I reckon it would be the men of the ship.

Q. Couldn't somebody else do it?

A. I don't think so.

Q. Why not?

A. I could not say, because the vessel was lying there as she went down, and I didn't suppose anyone else did it.

Q. It is all supposition on your part, you don't know of your own knowledge?

A. Of course, I only state to you of it as I went to work on the vessel, and I see how the boom was guyed out and the sails were set.

Q. Where was the end of the guy fastened?

A. As you see it there now, but we could only see the after part of the guy. We could not tell how *forward* it went.

Q. Could you not see how it was fastened?

A. You could not tell how it was fastened, because we knew there was a wire guy with a tackle to it, and the tackle block ropes were cut adrift to allow the boom to come up.

Q. The boom could not come up until they were cut?

A. No, we unrolled the sheets first. It was cut while I was there because I gave the boy a knife to go down and cut it, and when the guy was cut the boom came up.

Q. And was the sail taken out?

A. Yes, taken up on the scow.

Q. How was it fastened amidships, how were the sheets fastened?

A. It was driven through the block amidships.

Q. You are sure about the guy being cut by you?

A. By a native boy, with my knife, because he had a knife that would not cut, and I gave him a sharp knife.

Q. It was cut then and there? A. Yes.

Q. You say you don't know who may have fastened it, but you suppose it was fastened by the people on the boat before she sank? A. Yes.

Q. Was it not possible to have done that trying to get the masts out?

A. That was not done while I was there.

Q. There was considerable work done before you went there?

A. Only the mooring of the ship, but nothing was attempted to be taken off before that.

Q. How do you know?

A. Because Captain Clark only engaged those two men to work there.

Q. Do you know what the "Iriquois" did there?

A. I don't know anything about that, I only know she was there.

Q. You don't know whether anything was done trying to bring it in? A. No.

Q. You didn't know that anything was done before until you went to work under Captain Clark?

A. No.

The COURT.—Point out on the model where the boom tackle with a wire on it was?

A. This is the wire guy coming along here, and there is a hook on here with a block and tackle to this boom, and it was cut here by the tackle underneath the halyards.

Mr. NEUMANN.—How far did that wire tackle reach and how far was the rope?

A. The tackle was hooked from here, and on a block here, and the other here to this point. This was a rope here, and this was a wire rope.

Q. Show on that model exactly where it went.

A. That I could not tell you how far it went. It came aft here or forward. We could not tell where it began or where it ended.

Q. But you know there was a piece of rope there that you gave the boy a knife to cut at that time?

A. Yes.

The COURT.—That was about opposite the tackle of the mizzenmast?

A. He cut it right here where he could get the nearest to the rope?

Q. About half of the tackle of the mizzenmast?

A. Yes.

Mr. NEUMANN.—Was it because the boom pennant was under the water that you could not see any of it?

A. The wire rope was stretched right along, and when this was loose the boom raised with the weight of the water against the sail.

Q. Was it because the boom was too far under the water that you could not see the end of the wire rope?

A. Yes; on account of the way she was lying, because this part of the stern was well out of the water, and we could walk along dry here, and you could not see any of the rope but here you could see very plainly. Along down here you could see very plainly.

Mr. McCLANAHAN.—I will now read the testimony of—

DAN M. FALDEY, being first duly sworn, testifies as follows:

Mr. McCLANAHAN.—What is your occupation?

A. Laborer; I was a sailor first.

Q. Do you know the "William Carson" barkentine?

A. Yes.

Q. When did you first see the "William Carson"?

A. Away out at Koko head.

Q. Why did you go out there?

A. I went out with Captain Clark to fetch her in here. He took me out to make a rope fast to her to fetch her in.

Q. How soon after she had sunk?

A. I know nothing about that.

Q. Were you alone when you first went out there?

A. I was on the tug boat.

Q. Was anyone with you?

A. Yes; the captain of the vessel and Captain Clark and one native man.

Q. When you first saw the "Carson" did you say and see anything?

A. I see the vessel lying on her side, port side up.

Q. Come here and show us by this model how she was lying. A. In this position, like this.

Mr. NEUMANN.—That was about the way she was lying when you went out there?

A. Yes; that is just the very way, with her stern up out of the water.

Mr. McCLANAHAN.—That is the way she was when you first saw her? A. Yes.

Q. Did you see any of her light boxes?

A. Yes; her light boxes were out of the water, just washing the water, the port light box.

Q. How much above water?

A. Sometimes it was out of the water. It was just washing by the water.

Q. What did you see inside of the port light box?

A. Nothing at all in the light box.

Q. No lamp in there? A. No lamp.

Q. How do you know there was no lamp there?

A. I did not see any lamp.

Q. Did you look? A. Yes, I looked.

Q. Did you speak of the matter at the time, that there was no lamp in the light box?

A. Yes; I made a remark to Captain Clark that there was no light in there, when I did not see any lamp in the light box.

Q. How near were you to it at that time?

A. I was in the small boat.

Q. How near were you to the light box?

A. I was as near as I could see.

Q. Was it five or a hundred feet?

A. I did not measure that. I could not tell you how many feet I was away, but I was close enough so I could see she had no light or lantern.

Q. Were you at the "William Carson" when the fore and aft sails were taken out of her? A. Yes.

Q. Who was there at the time?

A. Captain Clark was there.

Q. Who else?

A. And Tom Mason and Bill Mason, his brother, and some more men whose names I didn't know.

Q. You know these men you have named?

A. Yes.

Q. Did you at that time see the boom sheet to the mizzenmast, do you know what the mizzenmast is?

A. Yes.

Q. Come and point it out on this model?

A. That is it.

Q. Did you see the boom sheet? A. Yes.

Q. Point it out on the model. A. Here.

Q. What is this? A. The boom sheet.

Q. Did you see that? A. Yes.

Q. Do you know what the boom guy is?

A. Yes.

Q. Point it out.

A. Here is the boom guy pennant here, and here is the tackle.

Q. Did you see that at that time? A. Yes.

Q. Was it loose or taut? A. It was fastened.

Q. What do you mean by "fastened"?

A. When it is taut it must be made fast.

Q. Was it taut or loose? A. It was taut.

Q. Was the boom sheet taut or loose?

A. It was pretty taut.

Q. From where did you see them, what part of the boat? A. I was on top here.

Q. You could not see it down in the water?

A. Yes.

Q. Did you see the boom of the mizzenmast at that time? A. Yes.

Q. At the time that you saw the sheet and the guy boom? A. Yes.

Q. Was the end of the boom over or inside of the rail?

A. It was over the rail, not as far as that, but over the rail two feet, about two feet.

Q. Did you see the block? A. Yes.

Q. Was that over the rail? A. Yes.

Q. How far was the block over the rail?

A. The two blocks were over the rail, it must be.

Q. How far over the rail was the block to which the sheet was attached?

A. I could not say, it was over the rail.

Cross-Examination of DAN M. FALDEY.

Mr. NEUMANN.—How often were you there at the "William Carson," how many times?

A. I was out there four or five times.

Q. When did you go the first time, and with whom?

A. I went on the tugboat there with the captain, and Captain Clark, and one native man.

Q. What did you do there at that time?

A. I went in the boat with Captain Clark and this native man.

Q. What became of Captain Plitz?

A. He stayed on board of the tug. We pulled alongside and went on top of her.

Q. Which side of her?

A. To the port side.

Q. The port side was out of the water, was it?

A. Yes; it was out of the water.

Q. You went on board of the "Carson"?

A. I went right on top of her.

Q. What did you do there?

A. Came back on the boat again.

Q. You did nothing? A. Well, I did.

Q. Tell me what you did.

A. I came back again to get a rope to take off to her, which the captain knows himself.

Q. What else did you do then?

A. I took a small rope from the tug to the stern of the "Carson" and run it through a ring chock, fetched it back aboard of the tugboat, and made it fast to the wire hauser belonging to the tug. We heaved with the hawser out of the ring chock of the "Carson." I went aboard of the ship on the side of the boat, and I took the eye of the wire hawser and drove it through the chock and over the pit, and came back towards the tugboat again.

Q. All of that in one sentence means that you rigged a hawser?

A. I don't understand about rigging a hawser, I made her fast.

Q. Why? A. To tow the vessel.

Q. How long have you been at sea?

A. About twenty years now.

Q. Master mariner?

A. No, oh yes, I have been boatswain on one of the biggest ships in the Islands, now the "William Hyde" in the harbor now.

Q. What else did you do after you went back to the tug? A. Yes.

Q. What else did you do?

A. You see those yards up on that vessel?

Q. Yes.

A. On the foremast this runs down to the foreyard, and it was outside of the water, and I cut the ears of the upper topsail and got those down, and the ear of the gangsail, the ear of the royal, and the ear of the sky-sail.

Q. Is that all you did, or did you do anything else?

A. That is all.

Q. Then what did you do after you had cut those ears?

A. Took them around to the boat, I came on board the tugboat.

Q. What else did you do then?

A. I took a rest.

Q. After you took a rest, what did you do?

A. I took a rest.

Q. After that what did you do?

A. I walked around the deck. I didn't go and sit down all day.

Q. What did you do?

A. I didn't put it in the log book.

Q. You don't remember what you did?

A. I do.

Q. Why don't you say?

The COURT.—What did you do after that?

A. I told you what I did.

Q. Go on and finish up telling what you did after that.

Mr. NEUMANN.—What did you do?

A. I came on board the tugboat as I told you before.

Q. I want to know what you did after coming back to the tug, how long did you stay there?

A. That I could not say exactly.

Q. You did not stay five weeks?

A. On the tugboat?

Q. Yes.

A. I stayed until she came back into the harbor.

Q. When did she come into the harbor?

A. The next day.

Q. You stayed on her until then? A. Yes.

Q. What else did you do besides what you have stated? A. We went down and towed the ship in.

Q. That same evening?

A. It was the next day.

Q. Where did you bring her? A. To Honolulu.

Q. Into the port of Honolulu? A. Yes.

Q. Where did you leave her? A. In Honolulu.

Q. Don't you know that the vessel never came into port here? A. What vessel?

Q. The "Carson"?

A. I am not talking about the "Carson."

Q. I am talking about the "Carson," what did you tow in? A. We towed a ship in.

Q. What ship?

A. I don't know her name, some other ship.

Q. Some other ship? A. Yes.

Q. With what did you tow her in?

A. The tugboat.

Q. "Alea"? A. Yes.

Q. What did you do with the "Carson"?

A. Left her out there.

Q. When did you next see the "Carson"?

A. Next day.

Q. How did you get out then—swim? A. No.

Q. How did you get out there?

A. On a gasoline engine.

Q. With whom? A. Captain Clark.

Q. Who else? A. Some other men.

Q. What then? A. I stayed there.

Q. Name the men.

A. I cannot name all of the men, I cannot think of their names.

Q. Do you remember the names of a single one?

A. Yes.

Q. Who?

A. Which one, I don't understand what you say.

Q. You said you went out with some men?

A. Yes.

Q. I asked you whether you remembered the names of any of the men? A. I know two of them.

Q. Name them. A. Tom and Bill Mason.

Q. That was the next day after the collision?

A. Yes.

Q. Are you not mistaken about that?

A. I don't think I am mistaken about that.

Q. You are as sure about that as of everything else you have testified to? A. Yes.

Q. Don't you know that neither Tom or Bill Mason went aboard the vessel until a week after the collision between the "Claudine" and the "Carson"?

A. I know nothing at all about it.

Q. You swear that Bill and Tom Mason went out with you the day after you first went on board?

A. I could not say the day after.

Q. Didn't you just say so, that it was the next day?

A. I could not say.

Q. Didn't you say so?

A. I could not say that I went out the next day or the day after.

Q. Can you swear to anything that you have been stating? A. I can swear to what I did.

Q. When did you first notice the sheet and the guy to the mizzen sail?

A. When I went out there with Captain Clark, and when he wanted to get up the sail and save it.

Q. When was that? A. I could not tell you.

Q. How long after you first went out there?

A. I could not tell you.

Q. Was it a week?

A. I could not tell you whether it was a week or a month, or two days.

Q. Or two months? A. I could not say.

Q. Can you tell us whether it was in the day or the evening? A. It was in the forenoon.

Q. Plain daylight so that you could see what was going on? A. Yes.

Q. When you came there, what did you see with reference to this sheet and guy rope of the mizzenmast?

A. I see the sheet and the boom guy tackle.

Q. How far was the boom guy tackle from the end of the boom? A. It was hooked on to the boom.

Q. That was all you saw?

A. Yes; at that time.

Q. What did you see of the guy rope besides the tackle?

A. I don't understand the guy rope, sir.

Q. You know what a guy is? A. Yes.

Q. That fastens the sail?

A. Yes; but it don't fasten the sail.

Q. What does it do? A. Fasten the boom.

Q. Where is it made fast? A. On the rail.

Q. That guy rope, how was this made fast on the rail? A. I did not look to see.

Q. You did not see it, did you?

A. I did not see that part of it.

Q. It was under water?

A. They were all under water.

Q. The tackle was not under water was it?

A. Yes.

Q. How much of the guy rope could you see, what length?

A. Just a little of it; I didn't measure it.

Q. You could not see whether it was ten yards or ten feet, or two feet?

A. I don't understand about yards. I understand more about fathoms.

Q. Step down to this model. Where is the guy rope?

A. Here, that is the boom pennant.

Q. Did you see that? A. Yes.

Q. How much of it did you see?

A. About that much; this was more under the water.

Q. Go ahead.

A. You see this little pennant here and this line?

Q. Do you mean this?

A. Yes; there is a ring here, and it comes almost to about here, and this is supposed to be the tackle, generally two double blocks or one double block and a single block, and hook on here, and it is made fast about here.

Q. What is here?

A. There is a big strop here with a big thimble in it so that you can hook that in there.

Q. This you say at the time was slack or taut?

A. It was taut, sir.

Q. How was the sheet?

A. It was pretty tight, water will swell manilla rope because it will make it tight.

Q. It was tight because it was swelled by the water, you think? A. Yes.

Q. The gaff was under the water, too?

A. Yes.

Q. Where did you stand when you looked at this thing? A. Right here.

Q. If you stood on that side, which is the port side of the vessel, how could you see all of this here?

A. I could get down here.

Q. Down to the deck? A. Yes.

Q. And from there you could see that, how?

A. That was the way she was lying, about in that position.

Q. How could you from there see this here, was not the sail between you and the boom to the mizzenmast?

A. I could see there, sir.

Q. Without stooping down?

A. With my hands that way looking down.

Q. And you stooped a little and saw all of that?

A. You could come around here.

Q. Did you come around here? A. No.

Q. I am asking how you saw it from there?

A. Can't you see it here?

Q. No, I don't think I could.

A. I can see from here.

Q. At any rate, you saw it from there?

A. Yes.

Q. What did you do about that guy rope when you were there the second time about a month after or a week after, or some other date, what did you do with it?

A. I did not do anything with it.

Q. Did anyone do anything with it?

A. Yes, there was one native man that went down and cut that sheet, and when the sheet was cut the boom was not coming up because the boom tackle was cut.

Q. After the boom tackle was cut it came up?

A. Yes.

Q. What did you do with it?

A. Cut the sail off the boom and hauled the sail on a float we had out there, and put it into the boat and brought it ashore.

The further hearing of this case is continued until 2 o'clock P. M. this day.

Third Day, December 3d, 1900.

Afternoon Session.

Mr. McCLANAHAN.—I will continue reading the testimony:

Q. At the time you were on board of that vessel there was room for you to go dryshod on the port side of the vessel, on the part towards the stern, there was no water there? A. No.

Q. Did you see the place where the port side lantern was fixed? A. Yes.

Q. What was there?

A. There was nothing there only a light screen.

Q. Of what did that screen consist?

A. It was a wooden board.

Q. A wooden board? A. Yes.

Q. You say from where you stood on the port side of the vessel you could see underneath the boom guy?

A. I stood on the port side.

Q. But underneath the sail you could see it?

A. Underneath?

Q. Yes, the boom guy.

A. Talk a little louder.

Q. From where you stood on the port side of the vessel you could see the boom guy? A. Yes.

Q. The whole of it?

A. Not the whole of it; I did not need to look at the whole of it. I looked where the tackle was hooked on.

Q. That was about where that little ring was?

A. Yes.

Q. Was that under water or not?

A. Yes, under water.

Q. How about the gaff, was that under water?

A. Yes.

Q. The whole sail was in the water at the time you stood on the port side and looked over?

A. Yes, the whole sail was under water.

Q. What were you looking for when you saw that?

A. I did not look for nothing.

Q. You simply happened to see it?

A. When we wanted to get the boom up we were looking so we could cut the tackle.

Q. Just step over here. Put her as she lay in the water when you were on board.

A. Just the same as that.

Q. Like this? A. Yes.

Q. Where did you stand? A. Right there.

Q. Where Mr. McClanahan's hand is? A. Yes.

Q. From there you could see this guy rope?

A. The guy tackle.

Q. And the guy tackle was where, right here?

A. Hooked on the strap here.

Q. That was inside of the sail?

A. It was fastened here.

Q. Explain to the Court if this was taut here, how could you see from there?

A. You must understand that when that sail was under water, the motion of the water raised it to and fro.

Q. How could it do that if it was taut here and there?

A. No matter what the strain is on the sea it will work anyway.

Q. There was sufficient looseness in the sheet to allow it to work?

Q. Which way did it work?

A. Just like that, up and down, but it did not keep that way all of the time.

Q. And while it was working you could see this?

A. Yes, it gave a better opportunity to see it.

Q. Were you there when the guy was cut?

A. Yes.

Q. You lent a native boy a knife with which he cut it?

A. I did not give him any knife.

Q. With what did he cut it?

A. With a knife.

Q. Where did he get the knife?

A. From some other man, from some of the men.

Q. You did not see who gave it to him?

A. No, I did not take any notice of that.

Q. After it was cut what was the result? Did the sail come in to the vessel or remain outside?

A. It kept that way, the guys and the sheets kept it in that way.

Q. Although it was cut? A. Yes.

Q. It was cut in about the same position?

A. It might work a little, but not very much.

Q. And remained that way until you left?

A. I could not tell you how long it remained that way.

Q. When it remained that way the boom was in the water, was it? A. It seemed to be.

Q. Was it in the water?

A. I could not say it was out of the water.

Q. And how long did you remain on board of the vessel before the sail was stripped off?

A. The sail was taken off.

Q. Who took it off?

A. All of the men working there.

Q. Did you assist in taking it off? A. Yes.

Q. After the sail was taken off, what did you do with it? A. Put it in the boat.

Q. When was the mizzenmast taken off?

A. The mizzenmast was sawed off.

Q. At the same time the sail was taken off, at what time was the mizzenmast taken off?

A. I could not tell you. I was there, but it was not necessary for me to remember this thing.

Q. Do you remember anything about it?

A. I remember of its being sawed off.

Q. After or before the sail was taken off?

A. If that was sawed off we would not need to cut the sail off. The sail must have been taken off before the mast was taken off.

Q. What was done with the tackle and everything else that was there?

A. It was brought on shore, I guess.

Q. Do you know, or are you guessing?

A. It was brought on shore.

Q. What did you do with the mast?

A. I don't know; I did not follow up all of those things; I was not noting everything.

Q. All you saw was the stripping of the sail and the sawing of the mast? A. Yes, sir.

Q. You could not tell where it was taken to?

A. I don't know where. They would not take it anywhere unless they took it into the harbor.

Q. What was done with the spankermast, was that left in? A. What mast are you talking about?

Q. The hindmost mast.

Mr. McCLANAHAN.—The jiggermast?

A. That was sawed off.

Q. At the same time?

A. Two men could not saw off the same mast at the same time.

Q. Was it sawed off at that time, or at another time; was it sawed off that same day?

A. I could not swear it was sawed off that same day.

Q. How long did you work at that vessel, you yourself, altogether?

A. I could not say exactly. I know I laid off one day.

Q. At the time you went on board the first time you say you saw the board there where the red light was?

A. Yes.

Q. Was that under or out of the water?

A. Just washed by the water.

Q. The waves washed over it occasionally?

A. Yes.

Q. Did you see anything of the other board, the starboard light board?

A. No, I didn't draw my attention to that.

Q. Did any one draw your attention to the port side board?

A. No, but I myself drew my attention to it.

Q. The green one you did not see, the place where the green light should have been fastened?

A. I did not see any lamp at all.

Q. I am talking about the board fixed in the rigging. You see that green board in the model? A. Yes.

Q. You did not see that? A. No.

Q. You saw nothing of it?

A. No, sir, I did not draw my attention to that at all.

Q. Do you know where that wire rigging came from that was at the mizzen guy? A. Yes.

Q. There was a guy there? A. Yes.

Q. The boom pennant where did it come from?

A. I don't know, it came on the ship there, do you mean to say what it was hooked on to?

Q. No, where did it come from?

A. I could not say.

Q. All you saw was it was fastened to the ring there?

A. It was an iron hook on the railing.

Q. Was it hooked on the railing?

A. It must be when it was fastened because the boom guy tackle was hooked on to it.

Q. You don't know where it came from or who put it there?

A. How would I know, I was not on the ship to know who put it there.

Q. Will you swear that the pennant was there before you came there? A. Yes, and made fast.

Q. How do you know that?

A. It must have been made fast because the boom would have been on top of the water.

Q. You know it because the boom was not on top of the water, and that could only happen by the guy pennant being on top of the rail? A. No answer.

Q. When this boom guy was cut by the native boy, what did the boom of the mizzen mast do, rise above the water?

A. Just the end of the boom got to the top of the water.

Q. The end of the boom came up and the rest remained below? A. Yes.

Q. Where was that boom tackle made fast; did you see the place where the boom tackle was made fast?

A. No, I did not draw my attention to see where it was made fast. It was at the place where they cut it that my attention was drawn.

Mr. McCLANAHAN.—I will now read the testimony of—

Mr. JAMES MORSE, being duly sworn, testified as follows:

Mr. McCLANAHAN.—What is your business?

A. I am a carpenter.

Q. Have you had anything to do with the "William Carson"? A. Yes.

Q. In what way? A. In diving.

Q. Did you see the "William Carson" as she lay at a time when her mizzen mast could be seen? A. Yes.

Q. Under water? A. Yes, sir.

Q. At that time could you see the sheet which was attached to the boom of the mizzen mast? A. Yes.

Q. At that time could you see the guy pennant attached to the tackle on the mizzen mast? A. Yes.

Q. Was that sheet at that time slack or taut?

A. Taut.

Q. Was the guy pennant and tackle to which it was attached at that time slack or taut? A. It was taut.

Q. Do you remember of seeing at that time any block or tackle to which the sheet was attached at the boom?

A. There was two blocks there, one for the sheet and one for the tackle.

Q. Did you see this at that time? A. Yes.

Mr. McCLANAHAN.—(To the Court.) I would like at this point for guidance of the Court to call Captain Clark, in order to identify the boom which the last witness testified to, it can not be brought into the room, it is outside and he would testify that it came from the "William Carson," the mizzenmast boom.

Testimony of F. K. CLARK, called for the libelees; sworn.

Mr. McCLANAHAN.—Captain did you have anything to do with the boom the mizzen boom of the "William Carson"? A. Yes, sir.

Q. Where is that boom? A. Outside.

Q. That is the mizzenmast boom of the "William Carson"? A. Yes, sir.

The COURT.—That is the mizzen boom, is it Captain Clark?

A. Yes, sir.

Mr. McCLANAHAN.—Captain would you point out if you can that portion of the boom to which the sheet is attached?

A. The sheet is attached here and the guy here; that is for the guy and also that pennant would be there, that is for the guy.

Q. It is possible for that guy to shift its position on the boom further than would be allowed by that piece of wood there, attached to the boom?

A. That is what that piece of wood is put there for, so that this strap don't slip, there is two of them.

The COURT.—Where is the sheet attached?

A. Here, this block and tackle right there.

Q. Is there any hooks? A. A shackle.

Q. What is a shackle?

A. A piece of iron on some and steel on some and some a key.

Q. To the shackle is a block? A. Yes, sir.

Mr. McCLANAHAN.—The sheet is attached to the block? A. Yes, sir, drove into it.

Q. Do you know the benefit of the traveler?

A. It travels up the mast, it has rollers in it.

Mr. McCLANAHAN.—That is at the end of the boom, at the foot of the boom up against the mast?

A. Yes, sir.

Q. And that is the one that projects from the mast?

A. Yes.

No cross-examination.

Mr. McCLANAHAN.—I will now continue reading the testimony of JAMES MORSE.

Q. Was that block or those blocks outside or inside of the rail of the "William Carson" at that time?

A. On the outside of the rail.

Q. How far out?

A. I did not measure, but they were hanging pretty well over and beyond the rail. The ship was turned over and hanging pretty well below the rail.

Q. Outside of the rail? A. Yes.

Q. How far do you suppose those blocks are from the end of the boom on the mizzen mast?

A. I see the boom but I did not measure it.

Q. Can you give any idea of how far it would be?

A. About two feet or a little over. It is hard to say because we hauled the boom up but did not measure it.

Q. Where was this boom pennant fastened forward?

The COURT.—I would like to ask Captain Clark one or two questions now or before you get through, I would like to ask some of these captains one or two questions. I would like to know what day it was that he went out

there, to know whether the ship had moved from its original bed or not. I want to ask him if the ship was in the place where she sunk or not.

Mr. McCLANAHAN.—That has been testified to by the other witnesses.

Mr. CLARK.—That boom from the mast to the traveler, that is where the sheet is hooked, that iron band, where this sheet is supposed to be attached was 31 feet from the jaw; the tack is three feet, six inches.

The COURT.—Between this and the point here where the sail is attached?

A. Yes, sir; the sail comes three feet six inches outside of that band, and the chain is three feet nine inches long where it is attached there is one to each of them that keeps the boom from falling down; when they let go these halyards that boom would come down and strike the deck. We put the block into that eye and splice it, what we would call a thimble; they put in a block and the other end is fastened, the hauling part would be on deck so to give them a purchase when they want to jib over they hook this into the guy over on the other side, they have a tackle just like this on the other side.

Mr. NEUMANN.—Now you say that when they want to jib they loosen the boom guy? A. Yes, sir.

Q. And then she swings over and there is a tackle of the same sort over on the other side, which then holds it in place on the other side? A. Yes, sir.

Q. Did you find such a tackle on board of this vessel? A. A man went down and got that tackle.

Q. You said just now if they wanted to jib, that is to go on the other tack, they loosened the boom guy and swung her over? A. Yes, sir.

Q. And there is a tackle of the same sort that held it over? A. Yes, sir.

Q. Was there such a tackle on this ship?

A. I wasn't looking for that.

Q. You were not looking for anything except what you wanted in this case? A. I didn't find it.

Q. You could not find it?

A. I didn't look for it, I only got the boom and sails out and took the quickest and easiest method of doing so.

The COURT.—Answer "yes" or "no," did you find those?

Mr. NEUMANN.—To the boom on the port side?

A. No, sir.

Q. There was none?

A. It might have been there.

Q. Wouldn't you have seen it?

A. It might have been hanging down in the water.

Q. That side was out of the water?

A. It may have been, one end would come, would hook on to the other portion and hang down.

Q. Did you see on that vessel when you were dismantling her any guy connected with the spanker boom?

A. Her spanker boom was lying full in the water.

Q. Just answer the question?

A. No, sir; the other booms were under the water, this boom was adrift, everything was kind of over it.

The COURT.—You are referring to what boom?

A. The spanker boom—the jigger boom.

Q. And the jigger sail? A. Yes, sir.

Q. What do you call that sail?

A. The jigger sail.

Q. Now that was all chaffed, the rigging was all chaffed?

A. No, the rigging it is a wire rigging, but the boom where it came the sail was chaffed and of no use.

Q. That is the jigger boom? A. Yes, sir.

Mr. NEUMANN.—Did you find on the jigger boom any signs of there being a guy to set it out?

A. A place for it?

Q. Any guy?

A. The thing was all adrift loose. I did not find it there.

The COURT.—Now, you can explain anything that you want to.

Mr. McCLANAHAN.—I do not understand that my witness does not have to answer "yes" or "no."

The COURT.—If the question can be answered "yes" or "no," he must answer it that way, and then he can explain; I am trying to get the facts and get them right (to the witness.) Now you may explain any answer that you may desire.

The WITNESS.—Without a guy, that sail would be left to swing as it pleased; I have been on fore and aft vessels, and I know what I am talking about; on that vessel this boom was guyed back.

Q. You mean the mizzen boom? A. Yes, sir.

Mr. NEUMANN.—And there was no guy there?

A. I did not see a guy.

Q. Where is the guy as a usual thing fastened, the blocks to the spanker boom?

A. It is hauled to the rail, fastened to the rail.

Q. Show the Court exactly the place?

A. The pennant that is where it comes.

Q. That is the spanker sheet?

A. Yes, sir; hooked on here the same as on that boom when it wasn't used leading on the rail.

Q. When it is used where is it fastened?

A. It would hook on to this strap.

Q. It might be fastened some where else?

A. One end fastened there.

Q. The same as the other?

A. Yes, sir; and the other end would be here.

Q. And now when she is going to jib, then this is brought over here, is there the same guy over here?

A. Brought here and fastened here.

Q. And then a long tackle on this side?

A. Yes, sir. This boom as I found it was lying out with the guy taut; we tried to get the sail up and save them, they were new sails, and we got a man to go down and he found the guy.

Q. How long was that after the sinking of the vessel? A. Two or three days.

Q. That was in her original position before you pulled her in shore?

A. She was pulled in shore before we done anything.

Q. How far was she pulled in shore from where she sank? A. Fourteen miles.

Q. Well, now she was towed in? A. Yes, sir.

Q. That is just like a log? A. Yes, sir.

Q. The sail and rigging? A. Everything.

Q. Everything was going right through the water?

A. Yes, sir.

Q. And you got her in here into shallow water and then you went to work on her?

A. We moored her and then went to work on her.

Q. That is the fact is it? A. Yes, sir.

Q. Then the first thing that you did to wreck her was to pull her in shore? A. Yes, sir.

Q. And that was the next day after she sank or two days? A. The next day.

Q. You got some tug on the vessel and pulled her in you say fourteen miles? A. Yes, sir.

Q. And where did you pull her to?

A. Off Waikiki.

Q. How deep was the water?

A. Twelve fathom where we let go the first anchor, and then she lay right upon her beam ends, the forward part of the ship lying down and the after part of the ship and a part of it lying out of the water.

A. I can pretty well illustrate it, it was lying like that (showing).

Q. Of an angle of about thirty to forty degrees?

A. Yes, I should think about like that.

Q. Thirty or forty?

A. The top of the house and her rail was out of water.

Q. But the forward part of the ship was down?

A. Was down to about here; I have walked out to there on that rail.

Q. On the starboard side on the rail, the ship was out of water? A. All under water.

Q. And the port side was all out of water up to the mainmast?

A. Yes, sir; you could walk dry to there.

Mr. NEUMANN.—Was this screen under water or not?

A. Under water.

Q. The green screen? A. Yes, sir.

The COURT.—Mr. McClanahan admitted that the green light was taken out of there.

Mr. McCLANAHAN.—Yes, sir.

The WITNESS.—After the mast was cut out and towed ashore.

The COURT.—How many masts were cut out?

A. The mizzenmast, the spanker was, the main sail and the mizzenmast was taken out.

Q. Was the mizzensail taken out before the mast was cut off? A. Yes, sir.

Q. Well, now with the main sail you took the boom and what, the gaffs, did you?

A. We had to cut this guy, that took that altogether out.

Mr. McCLANAHAN.—(To the Witness.) Is it possible with the guy pennant that you found on the starboard side of that boat, holding the mizzenmast boom could it be used on the port side, if the boom happened to be on that side of the vessel?

Q. It very often happened when they didn't have enough aboard of the ship they would shift them over, haul that boom right amidship and hold it until they shifted and fastened it there, every ship that carried a double crew.

The COURT.—Do you know what was the fact on this ship, whether it was there or not?

A. I can't say that they had a double crew—I know that I wanted to save those two sails, the mizzen and the main, and I could not get this boom out, and therefore they could not get this sail clear without spoiling that sail. I had to send a man down to cut the guy, I gave him a new knife that I got at E. O. Hall's and I gave it to the diver, he came up and the edge was all gone off of my knife, and then he got another knife from another man and I told him to go further forward and he would find a rope.

The COURT.—Part was rope and part was wire?

A. Yes, sir, a part was wire and a part rope.

Q. How much was wire and how much was rope?

A. I can't say, he went down and couldn't cut it and it made his finger bleed and then he came up; I was going to break it off; when we got that clear it came right up, we cut the sails loose and sent the gaff and the boom ashore, we have the sails here to show.

Q. You know the construction of the "Claudine" do you? A. Yes, sir.

Mr. McCLANAHAN.—I will now continue the reading of the testimony of JAMES MORSE.

A. On the rail of the ship.

Q. Come down off the witness stand and show us about where it was fastened?

A. It was fastened on the rail here in about this position.

Q. About a foot or two aft the main rigging?

A. Yes, there is a staple like that.

Q. And a foot or two back of the main rigging?

A. A foot or two back of this railing, I know it is back of that because I went along the ship and that guy was fastened here.

Q. Where was the other end of the wire fastened?

A. Here and the tackle was fastened on the wire.

Q. The tackle is made of rope is it? A. Yes.

Q. How was that made taut, if you know?

A. By hauling this tackle and this tackle.

Q. I am speaking about the boom pennant, how was that made taut?

A. By the tackle, by pulling the tackle.

Q. Can you tell where the end of the tackle was fastened?

A. Here on the rail. There are a lot of pins there.

Q. It was fastened that time on the rail?

A. Yes.

Q. Did you see any of these pins as you call them abaft the rigging there?

A. Yes, there are always some pins inside of the rigging here, there is a place run out with pins stuck in it.

Q. Did you see anything like these pins here abaft the rigging?

A. I don't know whether abaft, but they are inside of the ship under the railing. A wood with a hole in it and a pin in it.

Q. Who undid the sheet to the mizzenmast?

A. That man sitting there, Tom.

Q. Which man? A. That fellow there.

Q. Thomas Mason? A. Yes, sir.

Q. Do you know whether or not anyone cut the tackle here on the boom guy? A. Yes.

Q. I don't, who was it?

A. I don't know his name, native boy.

Q. How do you know that he cut it?

A. Because he went out with us, and he went down first with the knife and got hold of the wire, and he said he could not cut it because it was wire, and he was told to go to the further end and cut the rope, which he went down and cut, and we hauled the rope up. I know him when I see him but I do not know his name.

Q. Will you come off the witness stand again and tell us how this boat was lying at the time you saw the shroud and the boom pennant, the sheet I mean?

A. She was lying like that.

Q. From where did you see the sheet and the boom pennant?

A. From over here and there sometimes. Sometimes we got underneath and dove down because we were trying to get the sail out, and we had a machine out there, but I thought if the boy could do it would be better than our machine.

Q. Did you see the sheet and the boom guy boom pennant there when you ran to the water?

A. Yes, you could see it plainly because the ship stuck pretty well out of the water.

Q. You are sure they were both taut?

A. Yes, you could not haul the boom up because it stopped.

Q. Did this wire rope called the boom pennant attach to the rigging here at all? A. No.

Q. It was outside of the rigging? A. Yes.

Cross-Examination.

(By Mr. NEUMANN.)

Q. Where did you say the cable was fastened?

A. The wire pennant.

Q. The tackle of the guy, where was it fastened?

A. On here, because I caught a lot of ropes there.

Q. As far back as the wire pennant?

A. No, I don't think so.

Q. It must have been further forward, the wire pennant was fastened a foot or two feet this way?

A. There is the end of the wire pennant, and there is the other end where the tackle hooked on, and another tackle hooked on the boom here, to tighten that they hauled on the tackle here and made fast there.

Q. To what was that made fast?

A. There are a lot of pins along the ship to fasten with.

Q. The guy rope was fastened there?

A. The rope for the tackle.

Q. After it had been straightened? A. Yes.

Q. How soon after the collision did you see that ship?

A. I could not tell you.

Q. Don't you know whether it was within a day or week or two or three weeks?

A. No, I went out when the thing was all moored and anchored.

Q. Had you been brought to that place where she was anchored? A. Yes.

Q. You saw here after she was brought in?

A. Yes.

Q. About what distance from the mouth of the harbor?

A. Two miles, a mile and a half to the bell buoy and half a mile from there out.

Q. Do you know how the collision took place between her and the steamer? A. No.

Q. You don't know how long after the collision it was that you first saw her?

A. No, I heard of the collision, but I don't know how long it was before I was hired to go out.

Q. How long do you think you had heard of the collision before you went out?

A. I could not tell you because I took no memorandum of it.

Q. About how long?

A. About a week, pretty near a week.

Q. It might have been more?

A. It might have been a week, it took the tug a couple of days, I think about a week.

Q. That was the way you found her? A. Yes.

Q. Do you know whether anyone had been in charge of the vessel after the collision and up to the time you came there?

A. I know that a tug got hold of it, I don't know who took charge of the vessel.

Q. At the time you boarded the vessel you found that rigging of the mizzen boom in the shape you have stated it to the Court? A. Yes.

Q. What happened to it before that you don't know?

A. No.

Q. Or what state it was in before? A. No.

Mr. McCLANAHAN.—I will now read the testimony of—

CAPTAIN G. K. CLARK, being duly sworn, testified as follows:

Direct Examination.

(By Mr. McCLANAHAN.)

Q. What is your business?

A. I have been following the sea for twenty-five or twenty-six years.

Q. When did you first hear of the collision between the "Claudine" and the "William Carson"?

A. Through telephone, I was waked up at night through the telephone by the watchman, who told me that the "Claudine" had arrived outside, and boat had come ashore.

Q. When did you first visit the scene of the collision?

A. The same night.

Q. The "William Carson"?

A. At daylight I went to Captain Fuller, and asked for the tug to go out and see the wreck.

Q. The Government tug? A. Yes.

Q. You went out to the "William Carson" on the tug the next morning after the collision?

A. Yes, as soon as I could get the tug.

Q. Who was on the tug at that time with you?

A. Captain Piltz, and the crew of the tug, and we took Dan Faldey, and a small boat of the Wilder Steamship Company's, so that we could use her when we got there, when we got there we took the boats over and made a line fast to the "Carson," we got aboard the tug and towed the vessel in where she is lying that way, we towed her in that day.

Q. What was the position of the "William Carson" upon arriving there that morning, come off the witness stand and show us from the model her position?

A. Something like that.

Q. Where did you attach the hawser?

A. Through the chock here, through a quarter chock, the tugboat with the pennant, through here and on the pits, I was in the boat with a native and a man jumped over on board and put the line over here.

Q. Did you make an inspection as far as you could that morning at that time of the "William Carson"?

A. As far as I could see from the boat and tug.

Q. After the hawser was made fast you simply towed her to where she now lies? A. Yes.

Q. Was that done in one day?

A. It was the next day before we got her in where she is now.

Q. It was two days after the collision?

A. It will be a day and a night, the collision hap-

pened the night before we got there, we got there at eleven o'clock in the day and it was the next afternoon we got her to where she now lies.

Q. Did any other vessel assist in *tying* her?

A. The Government tug, "Iriquois," came up, we tried to signal to her for assistance, but they came as far as required and returned and came back and tried to get the hawser fast, and the Captain and myself went aboard the tug while they were trying to get the hawser fast, but they could not do it. Then they made fast to the tugboat their hawser and towed for half an hour and the captain was afraid that they would tear the buoy out of the tugboat and so let go.

Q. That was during the time of the towing of the "Carson"' from where the collision occurred?

A. Yes, also the steamer "Lehue" came afterwards, and made fast to the tug and held on to the boat until they got to where the "Carson" now is.

Q. Did any other boat have a part in towing it?

A. No.

Q. The parts the tugboat, "Aleo," and the "Iroquois" took was at the time towing was actually going on?

A. Yes.

Q. After you got the barkentine to where it is now what did you do that very day?

A. We passed the tug's hawser through the steamer "Lehue," and let go to anchor, let go and held on all night, the steamer "Lehue" held on to her.

Q. The steamer "Lehu" took the hawser?

A. Yes.

Q. Without going to the "William Carson"?

A. Yes.

Q. And held on all night? A. Yes.

Q. Did anyone approach the "William Carson"?

A. No; not that I know of.

Q. What did you do the next morning?

A. We went out to try and get the vessel secured, the steamer "Lehue" was not fit to hold the vessel, and we made preparations to moore the vessel. We got the buoys and got ready, and Mr. Wight tried to get the "Iriquois" to go out and stand by, and it went out and let go the anchor within an eight or a quarter of a mile, and stood by all night, and the next day I went out on the "Hawaii" and relieved her, we went to work to moor the vessel, and on Sunday morning we laid the buoys there.

Q. How many days after the collision was this?

A. I don't know, I did not keep track of the days, I was up night and day.

Q. It was a matter of a few days? A. Yes.

Q. Not weeks? A. No.

Q. How long did it take you to lay the buoys?

A. Laid both on Sunday, in one day.

Q. And she is now made fast to these buoys?

A. Yes.

Q. After you secured the "William Carson" what did you next do on Monday?

A. I could not tell you, we were out there working around saving whatever wreckage we could, we started to take off the booms, the mizzen boom and the sails.

Q. After you made her secure did you come ashore?

A. Yes, I came ashore every night.

Q. When was it you began to take her booms and sails off?

A. I could not tell you that day or what day we could not start to do it in a minute.

Q. Was that the next thing you did after securing her to the buoys?

A. We took off the halyard, royal halyard first, and brought it ashore.

Q. What did you next take off?

A. The fore and aft sails I think.

Q. Who was it did the work of taking off the fore and aft sails?

A. I had four or five or six men and we all worked.

Q. Who were the men?

A. I had Faldey, and Tom Mason, and his brother, William Mason and James Morris, and two or three natives working with us.

Q. Did you superintend and direct the work?

A. Yes.

Q. On what kind of a craft were you?

A. I had a boat there, two boats and a pontoon, at times on one and at times on the other.

Q. At this time did you get on the "William Carson"?

A. Yes, I walked as far forward as the mainmast on the side there—

Q. What examination did you make of the boom of the mizzenmast, if any, with regard to her sheets and guys?

A. When we started to take off the sails of course we could not get the booms up, they were fastened below to the guys of the vessel, we sent a man down to cut them later on.

Q. Could you see that they were fastened?

A. Yes.

Q. Were they taut or slack?

A. They were taut.

Q. Was the sheet taut? A. Yes.

Q. Was the pennant boom taut? A. Yes.

Q. And was the tackle taut which was attached to the wire? A. Yes.

Q. You are sure about that?

A. Yes, we could see everything as plainly as you can see this floor, it was clear water in the morning.

Q. Could you say whether the boom of the mizzenmast was inside or outside of the rail, the end of it?

A. It was outside of the rail we could see that plainly.

Q. Were the block to which the guys were fastened, outside or inside of the rail?

A. They were outside of the rail.

Q. Come down off the witness stand and tell me whether that boom on that mizzenmast, placed as it is at that angle, is or is not the angle at which you saw it approximately?

A. Yes, that is about the angle, you could stand right on the rail here and look down.

Q. Take the witness stand again, Captain. Could you see how the sheet was fastened amidships?

A. No, you could not see that.

Q. I am talking about this?

A. I understand, the sheet no, you could not, because you cannot see when there is a dark background there, if there was no obstruction you might see it.

Q. But you could see the rope coming up from the fastener and it was taut? A. Yes.

Q. Could you see where the guy was fastened?

A. No, I could not say that I could see where it was fastened from where I was standing.

Q. Was that boom pennant outside or inside the rigging of the mizzenmast?

A. Outside of the rigging.

Q. Did it touch the rigging?

A. I could not tell because I could not see, I was not down there.

Q. Did you notice where those blocks were fastened to the boom, whether they were inside of the edge of the sail or outside of the edge of the sail?

A. Inside of the edge of the sail, we have the booms here, it is very easy to prove that.

Q. Can you say that the block there on that model on the mizzenboom is about where the block was as you saw it on the sunken boat? A. Yes, I think it is.

Q. When you went out there in the small boat did you see the inside board screens for the lamps?

A. I saw the one on the port side.

Q. What time was this?

A. I saw it when we first came along close to the vessel the morning after the collision.

Q. Was it below or above the water?

A. Above the water.

Q. Was there anything peculiar about it?

A. Nothing, there was no lamp there?

Q. You are quite sure about that?

A. I am positive about it.

Q. You had something to do with the starboard light on the "William Carson"?

A. I had the jiggermast cut out and took it alongside of the steamer "Hawaii," to have the mast stripped and save the rigging and the gear on it.

Q. Did you save the starboard light? A. Yes.

Q. Where is it? A. Down in the shop.

Q. Have you not got it in the Court?

A. No, it is not here.

Q. What was the condition of the starboard light?

A. Something unusual about it, sir. There is a piece of cloth around the top of it.

Q. What is that again?

A. There was something unusual about it, a piece of cloth was tied around the top of the lamp, and it never had been taken off. I don't know what is the matter with the lamp, or why it should be there.

Q. Was the receptacle for holding the oil there?

A. Yes, and Captain Mitchel threw it overboard and said it was such a filthy mess that he would not take it ashore. I was quite mad with him for doing it.

Q. This starboard light was still in the box?

A. Yes.

Q. Under the water? A. Yes.

Q. And the port light was not in the box?

A. No.

Q. Where was the "William Carson" struck with reference to the two colored lights, anywhere near them?

A. No, she was struck forward under the cathead.

Q. Do you think the collision was the cause of the removal of the port light? A. No, I do not.

Q. Or the red light? A. No.

Q. Have you ever been master of barkentines?

A. No.

Q. Of schooners? A. No, sir.

Q. Four masts? A. No.

Q. Of two masts? A. Yes, of two masts.

Q. As that sail was found by you, that boom, prior to its being taken out, is that starboard light properly fixed?

A. I don't know what you would call proper, it is not where the light can be seen.

Q. Is that not the proper place to put the light, where it can be seen?

A. Yes, but I don't think that could *been* seen and that was what first struck me when I went to the ship.

Q. That was the thought you had, that that light could not be seen? A. Yes.

Q. Have you ever sailed the "Claudine"?

A. No, I never sailed her, I have been a passenger on her.

Q. You say it was a native boy who went down and cut the guy? A. Yes.

Q. When did you first tell me about this native boy?

A. I did not speak to you about it until this morning.

Q. Where is the native boy?

A. We could not find him, he is out on the "Inter-Island" as a sailor.

Q. When will the vessel be back?

A. I don't know; she is running between Kukuihale and Hilo, I think, at present.

Q. Was the native boy in your employ at the time?

A. Not until we went out, he came along fishing in a canoe and the other men said he was a good diver, and I called him and he remained with us three or four days, and I paid him for his work.

Q. Have you been able to learn his name?

A. Some of the other men knew his name; I never asked him his name.

Q. That was all of the work he did at the time?

A. Yes, that was all.

Cross-Examination.

(By Mr. NEUMANN.)

Q. Do you know when the collision took place?

A. Only by hearsay, I was not there.

Q. What time was it that you first reached the "Carson" on the night of the collision?

A. It was the next day.

Q. You did not get there until the next day?

A. No.

Q. You did not see her that night at all?

A. No.

Q. About what time was that?

A. Somewhere about noon that we got to her.

Q. That was the time you went out on the "Aleo"?

A. Yes.

Q. Did you say anything to Captain Piltz with reference to the light that you say could not be seen?

A. No.

Q. Or to anybody else? A. I talked about it.

Q. At that time? A. Yes.

Q. To whom?

A. I made the remark to several that there was no light in the box.

Q. That there was no light in the box?

A. Yes, no light to be seen.

Q. Do you say that there was no light at the time of the collision?

A. I was not there and I could not tell then.

Q. What was the nature of the cloth on the green lights?

A. The light is here and will show for itself.

Q. We will find out where the cloth was and what it was? A. Yes.

Q. What kind of a cloth was it?

A. It looked like a piece of stocking or sleeve of an undershirt.

Q. Did you find that light?

A. No, the light was given to me by the captain of the "Hawaii." I gave him the mast and told him to save everything he could.

Q. What was done about the light, who took the light?

A. He took it and gave it to me when the vessel got in and landed everything.

Q. He had thrown the lamp away, you say?

A. Yes.

Q. You don't know what became of it except what he told you? A. No, sir.

Q. Could you see that light in the position in which that vessel is from where you are?

A. Yes, certainly I can see it from here.

Q. From where you are sitting can you see the light yet?

A. I could not, two points abaft the beam I could not see it, I would not be supposed to see it,

Q. You take this direction, that steamer there and this vessel going this way, could this light be seen from this steamer? Go over there and see?

A. Yes, that light ought to be seen from there.

Q. If that steamer went straight along there it could have that light always in view until it passed you there is no danger of not seeing the green light?

A. Not from here.

Q. Supposing the steamer came along until it came up to here and then she ported her helm, so that she struck this vessel on the bow near the cathead, that would bring her red light towards the green light or the other? A. Yes.

Q. But she still could see the green light?

A. That is, unless she got so far ahead he could not see it, and the sails shut it out.

Q. Here, Captain, she ports her helm, of course she brings the port sideup that way and shows her port light? A. Yes.

Q. And knocks this vessel in the cathead?

A. If she was in that position you place her, certainly, if there was a light there it could be seen, but suppose you put her here, how would that be?

Q. That would be another thing?

A. Yes or here for instance.

Q. Did you have a conversation with Captain Weisbarth that morning? A. No.

Q. Did you have any conversation with any of them on the evening of the collision?

A. No, no more than when he came in and told me what had happened.

Q. What was it he told you?

A. That was all. I did not allow Captain Weisbarth or his crew to come out of the boat because the quarantine was on. He told me he had had a little collision and that the vessel had sunk and had a crew aboard.

Q. Did he say anything about the light?

A. No, I asked no questions.

Q. Did he not say anything about having seen a green light?

A. I have had no conversation with him whatever.

Q. Did he not tell you at that time that he saw the light of the "Carson" or any light?

A. No, he did not.

(By Mr. McCLANAHAN.)

Q. Is this the light that was given to you?

A. Yes, sir.

Q. That is the rag you refer to? A. Yes.

(By Mr. NEUMANN.)

Q. This rag does not appear to obstruct the light?

A. No, but it shows that the light is not perfect or it would not be there.

Q. Why do you think that rag was put there?

A. The lamps must have been in the habit of going out, I have been there myself.

Q. If the lamp was in the habit of going out could it light itself? A. No, sir.

Q. If the lamp was burning just before the collision, it had not gone out?

A. It could have been lighted just before the collision, just too late to have been seen perhaps.

Q. Do you think it was light just before the collision?

A. I would not like to say, but I would like to know where the other lamp went.

Q. That is hard to tell. How long was it before you boarded that vessel after the collision, how many hours?

A. Twelve or fourteen hours.

Q. There was a possibility of someone having taken the red light out? A. At sea, out there, yes.

Q. Who was in charge of the *collision* after the collision?

A. I was supposed to have charge of her, I moored her.

Q. During this twelve hours, was anyone in charge of her?

A. No, we found no one there, the "Leleo" had her, we found no one there when we got there.

Q. And when you got there you took charge?

A. I don't know as I took charge.

Q. Do you know who had charge of the vessel during that night?

A. No, I don't know of anyone, there might have been someone there, but I don't know who it was.

Q. Do you know what became of the captain and the crew of the vessel after the collision?

A. The first I saw of them they were in at the light-house or wharf, on the same night, in the "Claudine's" boat.

Q. That was after the vessel keeled over?

A. Yes.

Q. Is this light just as found by you?

A. Yes, just as I got it.

Q. With whom did you speak on that same evening about this collision? A. What evening?

Q. That same evening?

A. It must have been twelve or one o'clock in the morning.

Q. Say at midnight?

A. I spoke to Captain Weisbarth.

Q. And nothing was said about the lights on board of the vessel? A. No, sir.

Q. You did not ask him? A. No, sir.

Q. Would it not be the proper thing, if such a thing happens, the first thing to ask would be whether or not there were any lights?

A. I don't know as it would.

Q. Is that not a very important thing?

A. I did not think that was the place to ask questions or argue it.

Q. That was the reason you did not ask any questions? A. Yes, sir.

Q. Nothing was said about it?

A. I have never spoken to him about it, I never spoke to Captain Weisbart about it.

Redirect Examination.

(By Mr. McCLANAHAN.)

Q. Do you know how to work a lamp of this kind?

A. Here is the door and this is the reflector.

By Mr. McCLANAHAN.—Respondent offers the lamp in evidence, the light.

By Mr. NEUMANN.—Offered in evidence for what?

By Mr. McCLANAHAN.—To show the condition of the lamp.

By the COURT.—If the objection is made I think it should be further identified.

(By Mr. McCLANAHAN.)

Q. You got it from Captain Mitchell? A. Yes.

Q. Where did he get it?

A. Out of the rigging of the "Carson," the man gave it to me for the lamp.

(By Mr. NEUMANN.)

Q. What he told you?

A. Yes, he is on the steamer "Hawaii," now at Hilo.

(By Mr. McCLANAHAN.)

Q. When will he be back?

A. He may be back in a few days.

Mr. McCLANAHAN.—I will not read the testimony of—

CAPTAIN PILTZ, recalled as a witness for the defense, testified as follows:

Direct Examination.

(By Mr. McCLANAHAN.)

Q. Is this your starboard light or not?

A. I don't know.

Q. On your oath, you cannot tell whether it is your starboard light?

A. No, it is not in the same condition as when I saw it last.

Q. Does it look like your side light?

A. I could not say.

Q. How did your side light differ from that?

A. It is the same shape.

Q. I am not talking about the similarity, differences?

A. About the same size.

Q. I want to know the difference?

A. It is not the same shape and I could not identify it, it does not look like it.

Q. How did your lamp look?

A. Our lamp looked bright and polished and clean, and in good shape and brand new, that does not look like a brand new lamp.

Q. Don't you recognize that sock around the top of the head? A. No.

Q. Or that cloth? A. No.

Q. You never saw it before? A. No.

Q. And never had it around your lamp?

A. Not that I saw.

Q. And the only difference between the lamp and your lamp is that this is not shiny? A. Yes.

Q. That is the only difference you can possibly swear to? A. Yes.

Q. Was your lamp of the same height as this?

A. I never saw any sock around my lamp.

Q. You are not prepared to swear that there was no sock around it?

A. No, I am not prepared to swear that was around my lamp.

Q. Was your lamp nice and shiny in the night of the collision?

A. Yes, they generally were polished and kept clean.

Q. I want positive proof that your lamp was bright and shiny on the night of the collision? A. Yes.

Q. You will swear to that? A. Yes.

Q. The man who did the polishing had gone away?

A. It looks like it, according to that lamp.

Q. The man who did the polishing of your bright and shiny lamp has left the country?

A. No, I don't think so.

Q. What is his name? A. Tostensen.

Q. Is he here? A. Yes.

Q. He is the man who polished the lantern in the condition it is?

A. I did not say he polished this lantern; he attended to the lanterns.

Q. You have sworn that your lantern on that night was polished and bright? A. Yes.

Q. The carpenter is the man who does it?

A. He attends to the light.

Q. Did he do the polishing of your lamp?

A. He kept them clean.

Q. Did he do the polishing?

A. I never saw him.

Q. Did he do the polishing? A. No.

Q. You never saw him doing polishing? A. No.

Q. Can you tell us who did the polishing of your lamps? A. I don't know.

Q. Can you tell us when it was polished?

A. He generally cleaned the lamps every day.

Q. Can you testify positively to the hour or the day when this particular lamp of yours was polished?

A. No.

Q. When did you look to notice that it was polished and bright?

A. Sometimes in the evening when they were brought aft.

Q. I am talking the time you looked just before the collision, when you looked and found the lamp was polished?

A. I saw them put the lamps out and they looked nice and clean.

Q. You saw that? A. Yes.

Q. And polished? A. They looked clean.

Q. You say your lamps were polished?

A. They were not in that condition.

Q. Were they bright and polished?

A. They were more or less polished.

Q. Were they any more polished than that if I wipe off the dust? A. Yes.

Q. Is it your custom and habit to keep your lamps polished on a sea voyage?

A. Yes, when we have brass lanterns we keep them clean.

Q. I am talking about their being polished. You have said there was a difference between this lantern and yours in that yours was polished?

A. That is not polished.

Q. That is the difference?

A. Yes, that is the difference.

Q. And the only difference between them?

A. That is all except the rag. I never saw the rag around it.

Q. Is that the kind of a rope the lantern is tied by?

A. Yes, that is a kind of a lanyard it is tied with.

Q. You don't recognize that lanyard? A. No.

Q. Do you see any difference between that and yours?

A. It is too long a lanyard.

Q. Was your lanyard new? A. Yes.

Q. And this is old? A. Yes.

Q. That would be the difference between your lanyard and this? A. Yes.

Q. Yours was new and this was old? A. Yes.

Q. How long had you been on the voyage with this new lanyard?

A. A little over six months and some days.

Q. Would not a lanyard of that size become old in six months' usage?

A. It should not be old in six months.

Q. It should not be old in six months? Would it look different from that in six months, and, as a matter of fact, is it not your lantern?

A. I could not swear it is.

Q. Don't it look awfully like it?

A. It looks like a lantern of ours, but I could not swear that is my side light.

Q. Simply because it is not quite as clean?

A. That is right.

Q. That is the only reason? A. Yes.

Q. You don't impute to us any change of lanterns?

A. Oh, no.

Q. So that lantern may be yours, and the only reason you cannot swear it is because it is a little dirty?

A. Yes.

Mr. McCLANAHAN.—Will now read the testimony of—

CAPTAIN CLARK, recalled.

Further Redirect Examination.

(By Mr. McCLANAHAN.)

Q. Who was present when the captain of the "Hawaii" turned this lantern over to you?

A. I don't know, and I don't remember who was there when he passed the lantern over to me; I could not go aboard the vessel; it was quarantined, and he passed me the lantern.

Q. What was your connection with the "Hawaii" at that time?

A. I took the mast to her and got him to strip her; the mast with all of the rigging was more than we could handle, and the "Hawaii" was there depending on us.

Q. This lamp was fixed in the screen you turned over to the captain of the "Hawaii"?

A. Yes, it was alongside when that came above water; that was sometime in the forenoon.

Q. That you turned this over to the captain of the "Hawaii"? A. I turned it over in the afternoon.

Q. Did you at that time see this lamp?

A. No, I saw the thing ashore out of the water, and I went away; I was in the little steamer launch.

Q. So you are not able to identify it?

A. No.

Q. What became of the "Hawaii" after receiving this lamp?

A. She received the lamp and they stripped the mast and brought it in here, and brought it on the wharf next day.

Q. She was in quarantine at the time? A. Yes.

Q. You went out to her?

A. She came close enough to the wharf to land this.

Q. You asked for the lamp? A. Yes.

Q. And this was given to you?

A. I asked them for the old lamp, and the captain said it was in such a mess that he threw it overboard.

Q. Was the "Hawaii" in your employ at the time?

A. Yes.

Q. Doing nothing but attending to this rigging?

A. That was all she had to do.

Q. Had the "Hawaii" come to *show* between the time you returned the lantern over to it and the time you took it away?

A. He only came close enough to the wharf to land this rigging.

Q. You are sure there was a lantern in the box that you turned over to the captain of the "Hawaii"?

A. It must have been that one.

Q. There was a lantern in it?

A. I seen the lantern.

Q. You did turn over a lantern to the captain of the "Hawaii"? A. Yes.

Q. What kind of a boat is the "Hawaii"?

A. Steam schooner.

Q. Carrying lamps like that?

A. Side light she carried; I don't know whether they are larger or smaller than that.

Q. Can't you swear that this was the lamp that you turned over to the captain of the "Hawaii"?

A. No, sir, I was not close enough to see that.

Q. Had you any conversation with the captain of the "Hawaii"? A. No, sir.

Q. Had you any conversation with anyone about a lamp? A. No, sir.

Q. From the time you turned it over until the time you received it back?

A. No conversation; I merely told him to look out and save everything on the mast.

Q. What was the conversation that took place between you?

A. Only I passed the mast over and told him to strip the rigging.

Q. At the time the "Hawaii" came up to the wharf?

A. Then I asked for the lamp; I said, "Where is the lamp?" and he passed it over.

Q. Was anyone there at the time?

A. There might have been; no secret was made of it.

Recross-Examination.

(By Mr. NEUMANN.)

Q. Are you aware of the effect of the collision between the steamer and the barkentine?

A. I have seen where the "Claudine" bow was scratched, and there is a dent in it.

Q. Anything else?

A. I have not been aboard the vessel; nothing more than I can see from the wharf, just a little scratched on her bow.

Q. Do you know about her losing her light?

A. No.

Q. Did you get any such report? A. No.

Q. Do you know whether she lost it?

A. I don't think so, because I would have had to have furnished another one.

Q. You don't know whether she got any other red light from anyone else? A. No, sir.

Q. Or from any other boat? A. No, sir.

Mr. McCLANAHAN.—Will now read the testimony of—

RHODERIC McNEAL, being duly sworn, testified as follows:

Direct Examination.

(By Mr. McCLANAHAN.)

Q. What is your business?

A. I am a sailor.

Q. Have you held any position on the "Claudine"?

A. Yes, I was second mate on her.

Q. At the time of the collision with the "William Carson"? A. Yes.

Q. Tell the jury about that collision.

A. We left Honolulu at 6:50, or ten minutes to seven; we proceeded on our way; about half or three-quarters of an hour after leaving I went on the bridge; I set the mainsail before going up, and did several other little jobs; I went on the bridge to relieve Captain Weisbarth; he gave me the course, east three-quarters south; that was the usual course taken before.

Q. Go on.

A. This would be about a quarter to eight that I went on the bridge; I cannot be sure of the time now.

Q. Who was at the wheel?

A. I think John Antone; I could not be positive, or whether it was Fisher.

Q. Who was at the wheel when the collision took place? A. A man by the name of Fisher.

Q. Go on with the story.

A. About half-past eight I saw a bright light ahead, bearing east or three-quarters to half a point to port bow; I watched it for a little while, and at first thought it was the Molokai light. It changed its bearing, and I watched it for five minutes or so, and it changed its bearing to a little on the starboard; at this time the quartermaster wished to be relieved, and I went to call him; it took me a couple of minutes or so.

Q. Proceed.

A. He was not in his room at the time, but I was told he was on deck, and I found him on deck; he told me he had come up shortly after; I went and got on the bridge again and the light was still moving starboard about, and I thought it was a steamer, maybe, coming our way.

Q. What kind of a light was it?

A. At this time there were two lights, I think; at first, one light; the two bright lights close to each other.

Q. Low down or high up?

A. I could not tell very well; it was a dark night and little hazy; they seemed to be quite a distance off; I watched them for six or seven minutes longer, not looking at them particularly all of the time, but looking around, and I could not see any indications of side lights, and I concluded it was a steamer going the other way; I saw the quartermaster was not coming, and I went to see if the captain was there; I went into the saloon to see whether he was there, and did not see him there; I

then came up on the bridge again, and thought the lights looked about three-quarters of a point on the starboard bow, and I concluded that I would pass on the other side and blow one whistle to call the captain's attention; I blew one whistle; the captain came up pretty soon, I could not say how long, and asked why I had blown the whistle, and I showed him the light and he said it must be a vessel going the other way; he said the light was too far away to see any side lights; he said "Keep on the course again"; so I walked over and sung out to the quartermaster "Starboard," and he answered "Starboard," and brought her up on the course, as near as I could recollect.

Q. Go on.

A. The mate had come up in the meantime, and I believe he asked why the whistle was blown; I cannot tell how long that was, a few seconds, probably; he stepped forward to the scuttle and says, "There is a green light."

Q. Go on.

A. "Yes, there is a green light; hard to starboard," At the time he sung out "hard to starboard," I looked down to steady the wheel, and if I recollect rightly, he put the wheel a few points over; I looked up to see the green light, and whether it was the mast or what it was; I could not see anything; I walked over to the middle to see what I could, and then all of a sudden we seemed to be right on top of her; an order was given "hard to port, go round her bow."

Q. Go on; what was done after that?

A. I made a run forward, and we had collided, of course, in a very short time. Somebody sung out to me to get the boats ready; I went aft and tried to hunt up the natives, and they were scattered here, there and everywhere, and after awhile we got enough together and went off in one boat and pulled alongside the "Carson." It think they were already in their little boat lying alongside, and some of the men were transferred into our boat and some remained in their little boat.

Q. Did the captain get into your boat?

A. Yes, and his wife.

Q. What did the captain say?

A. He asked me why we ran into him, and why we did not keep our course.

Q. What else did he say?

A. Well, he made several remarks, and told his wife that it was not his fault. He said, "Never mind, it was not our fault," and he said he swung off for us and kept off.

Q. By keeping off he "luffed into the wind"?

A. Yes, that is my impression.

Q. Your impression is that when he saw you were running into him he kept off?

A. Yes, kind of swung off.

Q. The order to port the helm was given about the same time you blew the whistle?

A. The order to port? Yes, about the same time; I guess the order to port was given a half a second or a second before, and I stepped over and blew the whistle.

The COURT.—You blew the whistle for the captain first, and afterwards the whistle for the boat?

A. No, only the one whistle.

Mr. McCLANAHAN.—Why did you blow the whistle?

A. To call the captain.

Q. That was the only reason?

A. That was the principal reason.

Q. What was the other reason, if that was the principle reason?

A. I did not know but that this might be a steamer approaching, and I thought it would give the approaching vessel warning.

Q. It was notice of what?

A. That I was porting my helm.

Q. That was in your mind at the time?

A. I just merely thought that way; I didn't think it was a steamer approaching, but thought it was going the other way; again, I thought it might be; it kind of entered my mind.

Q. Prior to blowing the whistle and porting your helm did there seem to be any danger to you?

A. No, about the time I ported the helm I thought it was about time to get out of the road, but I did not think a minute or two would make any difference. I allowed that there was plenty of searoom, and I thought it was a good time to get out out of the road in time.

Q. When did you first see the lines of the hull and the sails of the "William Carson"?

A. That is a hard matter to tell.

Q. When did you first see them? Fix some fact that you have already stated, when you saw the sails or the hull.

A. When I stepped over from looking down and from telling him to steady the wheel, the mate sung out "There is his green light," and I saw something loom up, and in a very short time I saw the hull and everything else; I did not see the vessel when I first stepped over.

Q. Soon after the cry "There is a green light," you stepped over and saw something loom up that turned out to be the vessel? A. Yes.

Q. Prior to the seeing of the green light by the mate, was it possible for you to see the "Carson," her lines, and sails and hull?

A. I think not, when I first saw her she looked very indistinct. Maybe I could have seen her a second or so sooner, I could not swear to it.

Q. When you did see the "William Carson" after the seeing of the green light by the mate had your eyes prior to that time swept the horizon in the location in which you did see her?

Mr. NEUMANN.—Objected to as leading.

(Objection sustained.)

Mr. McCLANAHAN.—Had you or not swept the horizon with your eyes?

(Objected to as leading, and objection sustained, but the question was answered as follows: "I cannot remember whether I did or not, I was not looking particular at the vessel at the time. The captain was doing the most

of the looking at this time, he was doing most of the looking at this time.")

Q. Didn't you point out the lights to him?

A. Yes.

Q. Didn't you see the hull then? A. No.

Q. Or the sails? A. No, I could not see anything.

Q. When you pointed out the lights to the captain was that the last time you saw the lights before the collision? A. No, I saw them after that.

Q. Did you see the hull and the sails of the "William Carson" then? A. No.

Q. Is your eyesight good? A. I think so.

Q. Are you color blind?

A. I don't think I am; I am willing to undergo a test.

Q. Have I not tested your eyes?

A. Yes, I think I can stand a severer test than that. I can generally see what anyone else can, they may see it a little sooner than I, but I have average eye sight.

Q. You can see as well as the average seaman?

A. Yes.

Q. You never had any complaint with your eyes?

A. No.

Q. No trouble at all? A. No.

Q. What is this color? A. I call that green.

Q. You are sure it is not red?

A. It looks to me to have a little blue shade as it shows there.

Q. How soon after the blowing of the whistle did the collision take place, as near as you can get at it?

A. It is a hard matter to say.

Q. You did not look at your watch? A. No.

Q. Make a guess at it?

A. Minutes seem to be long sometimes.

Q. When do minutes seem the longest?

A. I suppose when a man is in pain.

Q. When in danger do they seem longer?

A. I could not answer the question maybe and maybe not.

Q. Do you think that it was a minute or a minute and a half after the whistle blew that there was a collision?

A. It seemed to be, and it might be, a little longer, I don't know.

Q. Were your lights burning properly on the "Claudine"? A. Yes, sir.

Q. Were you in good condition that night?

A. Yes.

Q. Had you been working during the day, or at hard work?

A. No, I don't do much hard work. The second mate is not supposed to do much hard work.

Q. You had not been staying up late at night before this occasion?

A. I had been up until about 12 o'clock the night before.

Q. Were you in need of sleep when you went on watch that night?

A. I don't know that I was actually in need of it. I suppose I could have slept, but I could get along without it all right.

Q. If you were in need of sleep you would not be in good condition?

A. I don't think I need sleep very badly that night, I can generally sleep when the time comes, whether or not I am sleepy.

Q. How long have you been a seaman?

A. Started in about twenty-five years ago.

Q. And have been following the sea off and on since then? A. Yes, off and on.

Q. Have you ever been a master?

A. No, sir.

Q. What is the highest position you have ever held as a seaman? A. The highest was mate.

Q. You have been a mate? A. Yes.

Q. You were the second mate of the "Claudine"?

A. Yes.

Q. Captain Weisbarth and the mate were on the bridge prior to the collision? A. Yes.

Q. Can you tell us how the "Claudine" struck the "William Carson" and where?

A. She seemed to strike her some where along the forerigging and glance forward.

Q. Did not strike her in the forerigging?

A. Around about that, up near the bow, probably between the forerigging and the cathead or around the cathead and about there.

Q. Did you see this green light the quartermaster pointed out?

A. I saw it after we pulled alongside of the "Carson," whether I saw it at the time he sung out I could not say, I got excited and did not pay any more attention, and I looked up at the sail and hull, in fact, I don't remember of seeing any other lights.

Q. You were excited, were you?

A. I didn't feel that looking at the lights would do any good; I was looking at the vessel.

Q. What kind of a night was it?

A. A dark night.

Q. Any clouds? A. It was a cloudy night.

Q. Were the clouds on the horizon as you approached it?

A. It was cloudy all around, thick and overcast and no stars.

Q. A light haze hanging near the water?

A. As near as I can remember it was a very dark night. More of a dark night than a hazy night.

The COURT.—Did you say that Fisher was the quartermaster? A. Yes.

Q. Was he the quartermaster when you went below to call?

A. I went to call the other quartermaster to relieve him.

The further hearing of the trial of this case was continued until the 4th day of December, A. D. 1900, at ten o'clock A. M.

Fourth day, December 4th, 1900.

Morning Session.

Mr. McCLANAHAN.—(Reading:)

Q. Whom did you relieve on your watch?

A. The captain.

Q. Who was on deck at the time you relieved him?

A. They were pretty near all there at that time, the natives.

Q. I am speaking about the officers of the vessel.

A. I guess the mate was on deck.

Q. The mate was on deck?

A. I could not be sure, he might have been in his room at the time.

Q. Who was on the deck at the time you went on the bridge?

A. The third engineer, he was up on the bridge at the time I went to relieve the captain he was sitting there with the captain.

Q. Who else was up there? A. That is all.

Q. Who was at the wheel at the time?

A. I am not sure whether it was Fisher or Antone.

Q. Was that before you went down for the captain?

Q. Which one of the men did you go to call?

A. I went to call Antone.

Q. Was that before you went down for the captain?

A. Yes.

Q. Did Antone come up and relieve Fisher?

A. No.

Q. Why didn't he? A. I don't know, I am sure.

Q. Did you go to call him yourself?

A. Yes.

Q. Don't you remember what he said to you?

A. I went below and he was not in his room, and they said he would be along shortly, when I called Antone it was about five minutes after I saw the light.

Q. Why did you go below to call Antone, was there no one else to send? A. No.

Q. You had to go yourself? A. Yes.

Q. At the time that you called Antone who was on deck? A. I don't know particularly of anyone.

Q. Somebody must have been on deck, the man at the helm was there? A. Yes.

Q. That is one man? A. Yes, sir.

Q. You are another man? A. Yes.

Q. Was there anyone else?

A. I could not say, they were lying around on deck.

Q. What were you doing on deck at that time, what was your particular business on the bridge at that time?

A. To keep a lookout?

Q. Did you have charge of the vessel or did anyone have charge of the vessel at that time, when you were at the lookout on the bridge?

A. The quartermaster.

Q. Who was he? A. Fisher.

Q. But he was at the wheel? A. Yes.

Q. That vessel has no one except the lookout and the man at the wheel? A. That is the general thing.

Q. And it was that way that evening?

A. Yes.

Q. At that time when you went to call Antone, why did you wish to call him, was it his turn at the wheel?

A. Because the other quartermaster asked me to.

Q. How could you leave your place as lookout, there being no one but Fisher at the wheel, and leave the deck for the purpose of hunting someone?

A. It is done sometimes in case it is necessary.

Q. There was nothing out of the way in that?

A. I don't know as it was exactly right.

Q. Can you give the Court any idea of why Fisher wished Antone called up?

A. I don't know, he might have various reasons.

Q. Whose turn at the wheel was it at that time?

A. That I could not tell you.

Q. You don't know?

A. No, I suppose it was Fisher's.

Q. How long had you been on the bridge when you went to get Antone, before that?

A. I had been there a half an hour or so.

Q. You say before you went to get Antone you saw that light? A. Yes.

Q. Describe to the Court what kind of a light you saw. A. A bright light.

Q. Not a colored light? A. No, sir.

Q. Where did it seem to be?

A. I looked at it for a minute or two and thought it might be the Molokai light.

Q. Did it look like a steamer masthead light?

A. I made up my mind that it was a steamer's masthead light.

Q. Afterwards, after seeing that light, can you tell us what hour of the night that was?

A. That would be about half past eight o'clock.

Q. Can you tell the Court at what time the collision took place?

A. About a quarter to nine, when I went to call the quartermaster it was about twenty-five minutes of nine. I cannot tell you exactly, it was around about that time.

Q. This whole business took place between half-past eight and a quarter of nine? A. I think so.

Q. You went to find the quartermaster, and did not find him; did you report to Fisher?

A. I came up on deck and saw Antone on deck.

Q. What did he do?

A. I said Fisher wanted to be relieved and he said he would come shortly.

Q. Did he come? A. No, he did not come.

Q. At that time, you say, when you went on deck, it was the captain who put you on the bridge as lookout?

A. Yes.

Q. And gave you the course? A. Yes.

Q. What course was it?

A. East three-quarters south.

Q. You took your place as lookout? A. Yes.

Q. How long after the captain put you in charge was it that you first saw this bright light of which you spoke?

A. Half to three-quarters of an hour.

Q. You had been on the deck from eight o'clock?

A. About a quarter to eight, I think.

Q. Whose watch was it from eight o'clock on?

A. It would be my lookout.

Q. You did not expect the captain back until you called him?

A. Well, the captain generally wanted me to call him if I see any light, or something like that.

Q. There were two persons there, Fisher at the wheel, and yourself as lookout? A. Yes.

Q. You saw that light after you had gone to look for Antone, or before?

A. I saw the light before I went to look for him.

Q. And you did not find him, and returned, and what did you see after that? A. I saw the light again.

Q. How did it appear to you then?

A. I saw two lights at that time, I think.

Q. In what direction did you see them? What bearing, after you had gone after Antone?

A. A little on the starboard bow, a little on the starboard bow when I went to call him.

Q. Did you see any light on the port bow that evening? A. I saw a light first on the port bow.

Q. Then you went below after Antone?

A. When the light got ahead and a little on the starboard bow I went to call Antone.

Q. You say that was a bright light? A. Yes.

Q. Not a colored light? A. Yes.

Q. How long were you below looking for Antone?

A. A couple of minutes.

Q. Then you returned, and what was the condition of the light when you returned?

A. A little more on the starboard bow.

Q. And remained there?

A. No, it kept gradually changing its bearings to the right, more on the starboard bow.

Q. Where was the light when you went after the captain?

A. It would be probably half to three-quarters of a point on the starboard bow.

Q. How long did it take to go and look for the captain?

A. Not over a minute, I think, probably a half a min-

ute; I just stepped below and came back; I looked and did not find him and returned to the bridge.

Q. When you returned to the bridge was there anybody else besides you and Fisher there? A. No, sir.

Q. How long after you returned to the bridge was it that you blew the whistle? A. Almost immediately.

Q. You say it was mainly for the purpose of calling the captain's attention? A. Yes.

Q. Why didn't you blow the whistle to call the captain before you went down?

A. I thought I would see him in his room and would not alarm anybody.

Q. And not finding him you blew the whistle?

A. Yes.

Q. Did you give any orders with reference to steering the vessel when you blew the whistle?

A. I told him to port his helm.

Q. How long did you keep the helm ported after giving that order? A. Very short time.

Q. About how long?

A. Twenty seconds or a half a minute, and the orders were changed again.

Q. How long after you had returned and blew the whistle did the captain come on deck?

A. He was up in a very short time.

Q. About how long was it?

A. It was not half a minute.

Q. He came up in half a minute? A. Yes.

Q. And what did he do?

A. He said, "Why did you blow the whistle"?

Q. That was on the bridge?

A. Yes; I told him there was a light.

Q. It was still a bright light?

A. There were two lights.

Q. Both bright lights? A. Yes.

Q. How were they placed, apparently on one vessel?

A. Yes; they did not look very far apart, they were on the port bow.

Q. How were those lights rigged, side by side or one above the other? A. They were side by side.

Q. At that time you were showing to the vessel your port side? A. Yes, sir.

Q. How long after that was it, after you saw those two bright lights, that you first saw the green light, or did you see it at all?

A. I cannot remember seeing the green light until I went alongside to bring off the crew, after the collision.

Q. I thought I understood you to say the mate pointed out the green light? A. Yes.

Q. And said "here is a green light"?

A. I heard him say that, and I went to look, I looked down below at the time, and then went to look for the light, and whether or not I saw it I cannot remember, I may have seen it, and likely I did.

Q. Who gave the command to starboard the helm?

A. The captain gave it to me, and I gave it to the man below. That was after the captain came up and had this conversation, he asked why I blew the whistle, and I said there was a light; I said, "I cannot see any side lights," and he said "She must be too far off," and he said to keep her on the course.

Q. He knew you had changed her course?

A. Yes, he ordered me to put her back on her course.

Q. What time elapsed between giving the order to starboard the helm and the collision, what time elapsed?

A. It might have been a minute or half a minute, I could not say.

Q. Did you see the man at the helm obey your order?

A. He started to.

Q. I understood you to say in direct examination that he ported the helm again?

A. Yes, when we found we were under her bows and could not get around her, the captain told him to port the helm again.

Q. You ported the helm twice that evening?

A. Yes.

Q. Once when you gave the orders, and once when the captain gave orders, after saying to put her on her course again? A. Yes.

Q. It was after the last time that the order was made to port the helm that she struck?

A. Yes, she was headed right for her bows when the order was given, and by swinging the other way she would have run amidships, she was on her course as near as I can remember, by trying to swing clear.

Q. When the captain gave the order to put her on her course again did the man at the helm bring her to her course again?

A. Yes, to the best of my knowledge.

Q. Did he starboard the helm?

A. Yes, I saw him do that.

Q. And the captain saw he could not clear her that way so he ordered to port helm again?

A. At the time I said to steady her on her course, and then the captain said "hard to starboard," and I saw the sails, and we then running right into her bows.

Q. How could you run into her bows, she sailing southwest and you east three-quarters south?

A. That was the way it appeared to me.

Q. You cannot explain that, how could you, on the old course, would you not have to strike her quarter?

A. If heading for her bows, we were heading for her bows.

Q. Here is the "Carson" going on a southwest course?

A. Yes.

Q. You come on her like this, east three-quarters south? A. Yes.

Q. In going on this way you ported the helm and brought her around this way? A. Yes.

Q. And after that you put her back on her course again? A. Start in again.

Q. Here is the original position of the two vessels.

A. Before the collision?

Q. This is about the situation of the vessel, eh?

A. At what time?

Q. At the beginning. A. No.

Q. When you saw the light upon your port bow?

A. On the port bow?

Q. At the beginning? Would that throw it on the port bow? Right here?

A. You mean on the port bow? Yes.

Q. Very well, the vessels go on, this one at a certain pace, and this one at a certain pace? A. Yes.

Q. You brought the vessel around to port?

A. Yes.

Q. And brought her this way? A. Yes.

Q. When the captain came on deck he gave orders to put her back on the course? A. Yes.

Q. That would put her back this way?

A. No, the other vessel was ahead and lying on the port bow.

Q. Not on the port bow, you were not on the other side?

A. She was on the starboard bow, but, when we were on the course again it brought her a little ahead.

Q. After you got that far the captain put her on her course again? A. Yes.

Q. Then he brought her hard to port?

A. Yes, but when he brought her on her course again the lights did not have the same bearing as before, when I changed the course they were three-quarters of a point or so on the starboard bow, and when the captain said to bring her on her course again I don't remember of seeing the lights, because I could not see anything when I looked up, and I though the foremast shut it out, and when I saw her hull, they were heading for them, I don't remember of seeing any lights, I have no recollections of any lights.

Q. The command to port the helm just before the collision was given by the captain? A. Yes.

Q. Are you sure about that?

A. I feel pretty sure about that.

Q. Did not the captain at that time give the command to put her back on her course, and not to port?

A. He said to put her back on her course before that.

Q. And before he got her back on the course he said to port the helm? A. She had gotten on the course.

Q. And then he gave an order to port the helm?

A. As near as I can recollect, I looked at the compass and steadied her so as to get her on the course again, and he put the wheel back, and the mate said, "a green light," and the captain said,"Hard to starboard," and I stepped over and looked up, and I could not see anything.

Q. At that time you could not see anything of the vessel or sails or anything else?

A. No, it seemed to me not, then I looked again and saw the sails looming up right ahead.

Q. Right ahead? A. A little on the port bow.

Q. When you saw the sails and the hull ahead of you what order was given, did you give any order?

A. No.

Q. Did the captain give any order?

A. He had said "starboard" and when he saw how close she was, and that there was no chance, and by swinging she would run amidships, he said "hard to port."

Q. And she came this way? A. Yes.

Q. And touched almost immediately? A. Yes.

Q. After? A. Yes.

Q. Are you sure the captain gave that order?

A. I feel quite certain about it.

Q. That was the real cause of the collision?

A. Why?

Q. This order.

A. I don't think so. I do not think the collision could have been avoided, going the other way it would have been worse.

Q. If you had kept on the course she had would you not simply have rubbed against each other?

A. We would have gone pretty close.

Q. The bow would not have gone into the vessel?

A. I think not; I think she would have gone clear.

Q. If the captain had not given that order?

A. Which course?

Q. I mean the second time.

A. No, no, she would have been in a worse collision.

Q. Why did you port the helm?

A. To go around her bow and make it as easy as possible, we were near her bows and, by going the other way, we would have caught amidships and sunk both ships, possibly.

Q. You are sure there were two orders given to port the helm, one by you and one that the captain gave?

A. Yes, I am quite certain about that.

Q. How far were you from the captain when the second order was given? A. Ten feet.

Q. He distinctly gave it? A. Yes.

Q. Did you repeat it to the man at the helm?

A. No, he gave it direct to the man at the wheel.

Q. What did he say?

A. "Hard to port," I believe.

Q. When you were on the bridge as a lookout there was nobody there except Fisher and yourself?

A. No.

Q. Only you two? A. Yes.

Q. And while there you first went after the quartermaster Antone? A. Yes.

Q. And after a while you went after the captain?

A. Yes.

Q. Who was left as the lookout when you went, when you left?

A. When I went to look I kept a lookout, I stepped off the bridge and looked into the room, and it was only a half minute or so.

Q. Do you know whether the vessel made any headway during the time you were looking for the captain?

A. Yes.

Q. At what rate was she steaming?

A. About ten knots an hour.

Q. Can you tell us at what rate the other vessel was sailing? A. No, I could not tell you.

Q. Approximately?

A. I don't know, she was probably going three miles an hour or so.

Q. If you will kindly listen to me you may possibly correct me if I make a mistake, I take it you were going east three-quarters south, and the other vessel was going about southwest?

A. I don't know how the other was going.

Q. Didn't you find out afterwards? A. No.

Q. At any rate, you saw only white lights?

A. Yes.

Q. And you lost those and did not see anything?

A. When?

Q. Just before the collision.

A. I was not looking for them, maybe I saw the green light, but I could not say.

Q. Did you see the green light after the collision?

A. Yes.

Q. Was it burning brightly? A. Burning fine.

Q. Until it went below the water?

A. It was above the water when I left it, we pulled around on the other side.

Q. Did you see the red light of the "Carson"?

A. I don't remember.

Q. The first thing you saw of the green light was when the mate called your attention to it?

A. I could not say positively, maybe I saw it then and maybe not.

Q. You only remember of seeing the green light of the "Carson" just before she keeled over?

A. I remember of seeing it then, and it looked to be a very good light, and I was wondering.

Q. Why you had not seen it before? A. Yes.

Q. Mr. McClanahan examined you as to color blindness, why did he do that, where did he do that, in his office? A. I guess so.

Q. Don't you know where he did that?

A. Do you wish me to tell him where it was, where I was examined as to color blindness? (Addressed to Mr. McClanahan.)

By Mr. McCLANAHAN.—Yes.

A. Down at the wharf.

By Mr. NEUMANN.—Q. How did he come to do that?

A. I cannot tell you why.

Q. You stood the examination pretty well?

A. Yes, I guess so, I think he was satisfied.

Q. Then you can tell the difference between a green and a red shade, and between a green and a white shade?

A. If the examination was not satisfactory I am willing to undergo another.

Q. I am asking you to find out how you stood the test.

A. I guess it was all right.

Q. When you saw the bright light over your starboard bow, what did you think that was?

A. When it changed its bearing to starboard bow?

Q. Don't you remember you have testified that you first saw the light on the port bow? A. Yes, sir.

Q. And in going on it changed position and got to your starboard bow? A. Yes.

Q. At that time what did you think it was?

A. I thought it might be a steamer coming toward us.

Q. Was that light as high up as the masthead lights?

A. The little boats running around here have very low lights, some of the steamers do not carry very high masthead lights; it didn't look like a big passenger boat with many lights about her.

Q. Did you see more than one light?

A. At that time I saw two.

Q. Did they look alike?

A. Pretty near alike I think.

Q. This was when she was on your starboard bow?

A. Yes.

Q. How long did those two lights keep up?

A. I was not looking at them right along, I watched them when on the *starbow*, and I went to call the quartermaster, and I watched them a little longer when I went to call the captain.

Q. It was then that you returned and blew the whistle?

A. I blew the whistle after I went to look for the captain and could not find him in his room, and I blew it as a signal for him to come on deck.

Q. At that time where were the lights?

A. About three-quarters of a point on the starboard bow.

Q. You took it upon yourself to change the *court* of the vessel at *time*? A. Yes.

Q. And port your helm?

A. Yes, and brought her around.

Q. What became of the lights during that maneuver? A. They shifted over to the other bow.

Q. Could you still see them? A. Yes.

Q. They were the same as when you left, two bright lights?

A. As near as I can tell, about the same, they seemed to be about the same distance apart.

Q. You never saw any green or red lights during that

evening unless they might have been lights on your own vessel? A. No, sir.

Q. Is it customary for a man placed as a lookout and in charge of a vessel as you were to leave his position for any purpose?

A. It is not customary on ocean going vessels?

Q. You should not have left your station?

A. It would have been more shipshape if I had stayed, there were only two quartermasters on all of these boats, and it seems to be about the way it is done.

Q. At any rate, that was all the lookout there was there, yourself? A. Yes, sir.

Q. And during that time you went below twice?

A. Yes.

Q. Leaving the vessel entirely in charge of the man at the wheel? A. Yes.

Q. When you blew that whistle you say it was first to give notice to the Captain that he was wanted on deck?

A. Yes.

Q. And secondly to give a warning to the people approaching?

A. I did not suppose they were approaching; at first I thought they were approaching, but not at this time I could not see the side lights I thought it was too far off to see, but after a while I made up my mind that the steamer was going the other way.

Q. You mean going the same way you were going?

A. Yes.

Q. And consequently not approaching you?

A. No.

Q. You then sounded a whistle for the Captain?

A. Yes.

Q. And when he came, the mate came also did he?

A. A little after I could not say how long it was the mate came.

Q. Did the mate come on the bridge? A. Yes.

Q. You were on the bridge yet at the time?

A. Yes.

Q. And the Captain was on the bridge at the time?

A. Yes.

Q. You say at that time when you gave the order to port the helm it was your intention to cross the bows of the vessel, who ever she was?

A. No, if she was going our way there was no necessity, we would pass on the other side.

Q. How did you come to make this mistake, I thought you said you gave an order to port the helm to cross her bows, thinking that was the easiest way to avoid her?

A. When?

Q. You said that this afternoon.

A. At the collision?

Q. No, the captain gave the order at the collision, before you ordered the helm ported.

A. I was not expecting a collision then. I thought we would pass on the other side.

Q. Don't you remember that I said why did you give an order to port the helm, and you said you thought it was safer to cross her bow, whoever she might be, than to keep the course you were on?

The COURT.—That is a mistake, that is not the testimony, that was his mistake with regard to what the captain did.

Mr. NEUMANN.—Why did you port the helm on the first order?

A. I thought I would pass the other ship on the other side, and try and make up time.

Q. For what place were you bound?

A. Our first port would be Lahaina.

Q. Not Kahalui?

A. Kahalui afterwards, after Lahaina.

Q. You thought simply that you would pass around her whether it was the bow or the stern, but, there was room enough to clear her?

A. If it was a steamer approaching it would give notice that it was going that way, it was in my mind first that it was a steamer approaching.

Q. Explain one thing to me, what is the meaning of blowing one whistle, what does it show on your part?

A. If a vessel is *approach* end on, our blowing the whistle you are porting helm, and he is supposed to do the same.

Q. Not that you are going to starboard him?

A. The course is direct to right starboard, one whistle means put the wheel this way and pass to this side.

Q. You ported the helm? A. Yes.

Q. And he was expected to do the same?

A. Yes.

Q. If he was coming to meet you? A. Yes.

Q. Supposing he was sailing the same way, you would run into him if he was to do that?

A. The way I was going if the steamer was approaching I would have the right of way and he would be the one to keep out of the way.

Q. It was his business to port his helm if it was a steamer?

A. It would be the signal if he was approaching us end on, anyhow, to let him know I was crossing that way, it just entered my mind that it might be a schooner but I did not see any light, I didn't see anything high enough for masthead lights or anything like that.

Q. You are sure that the Captain's last order was to port the helm?

A. I feel pretty sure about that.

Q. And that was given after the captain told you or the man at the wheel to put her on her course again?

A. That was given after.

Q. After he had ordered the "Claudine" on her course again? A. Yes.

Q. He gave the order to port her helm? A. Yes.

Q. About what time elapsed between his giving the order to put her on her course and the order to port the helm, how much time elapsed?

A. Very short time, maybe a half a minute.

Q. She had been brought around to her course?

A. As near as I can remember, yes.

Q. I understand you to say you looked after that and saw that she did?

A. Yes, I am quite sure about that.

Q. And within half a minute the captain changed his order, and ordered her hard to port?

A. Immediately.

Q. Did she have time to go on her course at all?

A. Yes, she was brought on her course.

Q. Did she travel on her old course again?

A. She might for a second or so, just as I was looking down and he said, "There is a green light," and the order was given "hard to starboard."

Q. That order would have brought her back to her course? A. She was on her course.

Q. You had given the order to port the helm before?

A. Yes.

Q. And she had not her course when her helm was ported? A. Yes.

Q. Then the captain gave the order to put her on her course? A. Yes.

Q. And she was brought around? A. Yes.

Q. And then the captain saw that he could not clear, and he gave the order to port her?

A. He ordered her starboard first, and then port.

Q. Starboard first, that was to bring her back to her course?

A. No, that was to go around astern; in a very short time he saw he could not get around that way.

Q. Here is one vessel going this way? A. Yes.

Q. And the other vessel coming this way?

A. Yes.

Q. You go around and at a certain time you port the helm and bring her around this way? A. Yes.

Q. Then she was brought back to her course again?

A. Yes.

Q. If she had proceeded in that course you think she would have cleared the vessel?

A. No, she was too near.

Q. Then the captain gave the order to starboard the helm and that was when they touched? A. Yes.

Q. Immediately after, she ran into the vessel?

A. Yes, I don't know how soon after, eight or ten seconds after.

The COURT.—When the captain first came out he put her on her course? A. Yes, sir.

Q. And then starboard her?

A. He did not go much on the starboard, but he ordered her starboard.

Q. And then he changed that order?

A. Yes, he found too much under her bow.

Q. He gave three orders? A. Yes.

Mr. NEUMANN.—You have charge of the vessel and did not know where that other boat was going or how it was going, or whether it was a steamer or a sailing vessel. Why didn't you slow up or stop?

A. I naturally supposed she was going the other way.

Q. How could you suppose that when she was really going a different way?

A. There was nothing to show that she was approaching us.

Q. You didn't think there was any danger from a collision?

A. No, I think if she had gone as I headed her she

would have gone clear; the light was off about two points or more.

Q. At any rate there was no effort made on the part of the steamer to stop her or slow her down?

A. No.

Q. You would have known it if there had been?

A. Yes.

Q. There was none made?

A. No, there was not much time for anything when the hull of the ship was made out.

Q. But, before that, when you ported the helm?

A. There was no necessity, nothing in sight, I did not think there was any danger then.

Q. At the time the captain and the mate came on deck was there not time enough to reverse the engines and stop the boat?

A. I don't know but what, when the captain came on board the deck there might have been, but, there was nothing to stop the boat for the captain judged that the light was a long way off.

Q. At the time the green light was first seen by the mate?

A. Shortly after that the sails were seen, and then the collision occurred.

Q. At the time when the mate called out "there is her green light" there was no chance to stop the "Claudine"?

A. I don't know she might have been slowed a little.

Q. But no such order was given?

A. No, when the green light was first seen I guess the

sails were first seen, we thought we would go around the stern.

Q. There was no other lookout on there?

A. No.

Q. You say, at first you saw that *bright*, which was neither red or green, on the port bow? A. Yes.

Q. Then you absented yourself, and before you left, the light had gone over to the starboard bow?

A. A little on the starboard bow.

Q. When you found that light had crossed your bow why did you port your helm?

A. I did not do it for some time after.

Q. You did it some time after?

A. I thought there might be a steamer approaching us, and, after a while I made up my mind that it was going our way. Next I thought it was going our way, and I thought I would go on the other side. Captain Campbell had the trip before, this time I was about three-quarters south, I thought I would go on the other side, it was just as well.

Q. Explain why you ported your helm after you saw the light on the starboard side?

A. That was the reason, I thought I would pass on the other side; we had been steering to the eastward, when I ported, the light was not more on the starboard side, and I thought I would go on the other side, it was immaterial on which side we were, probably by keeping as we were she would have gone clear.

Q. Let me ask you this: You had that vessel before you and you could not make out really which way she she was going, could you?

A. No, the only indication I had was that she was going in our direction.

Q. Going as you were you thought? A. Yes.

Q. If you wanted to overtake her you could have overtaken her on either side?

A. Yes, pass either one side or the other.

Q. Porting, the bow you would pass behind her?

A. Yes.

Q. And by keeping on the course you would pass on the right-hand side?

A. I would have gone pretty close to her.

Q. You could have passed by her? A. Yes.

Q. You thought either was safe enough, and thought you were far enough away to do so without any danger?

A. Yes, probably if I had concluded to keep on the course I was on I should have opened up a little more, and given her a couple points or so.

Q. I am trying to get at this: In the position in which you were after the captain and the mate came up, and the mate saw her green light; it was at that time that the captain sung out or it was before he ordered her helm ported? A. Certainly.

Q. When the mate said, "here is her green light" that was before the captain ordered her helm ported?

A. Yes.

Q. Didn't she have a chance to slow up or reverse her engines? A. I guess she could have done it.

Q. And that was not done? A. No.

Q. On the contrary the captain gave orders to port the helm? A. To starboard the helm.

Q. That was done and she was run into?

A. We were so close there was no chance to get around her. He sung out "hard to port."

Q. This last order brought her bow right into the bow of the "Carson"?

A. Yes, and the other way I guess she would have caught her amidships.

Mr. McCLANAHAN.—I will read this stipulation. It is stipulated between counsel of the respective parties that the course of the "Claudine" up to the time when the wheel was first ported was east three-quarters south, magnetic.

The COURT.—It is admitted that it is as it is on the map?

Mr. McCLANAHAN.—That it is east three-quarters south, that is admitted to have been the course of the "Claudine" up to the time of the porting of the wheel the first time. So we have at least one course fixed.

Testimony of JAMES SUTHERLAND, called for libelee; sworn.

Mr. McCLANAHAN.—What is your business?

A. Chief engineer of the steamer "Claudine."

Q. Were you such on the night of the 27th of December, 1899? A. Yes, sir.

Q. Where were you stationed on that boat at that time, the night of the 27th of December, 1899?

A. On what date?

Q. On the 27th of December, 1899, where were you?

A. I was in the engine room.

Q. You were in the engine room at the time the collision occurred between the "Claudine" and the "William Carson"? A. I was.

Q. And prior to that time where were you?

A. I walked up and down on the rigging platform.

Q. On the rigging platform? A. Yes, sir.

Q. In the engine room? A. In the engine room.

Q. You were on duty at that time? A. On duty.

Q. Will you tell the Court what happened immediately prior to the collision with the "William Carson"?

A. Well, I had my hands on the reversing gear of the main engine, I received a telegraph to stop and back at full speed.

Q. Did you reply to that telegraph? A. I did.

Q. What did you do next?

A. I proceeded to answer it with the engines.

Q. And with what success, tell the Court what happened?

A. When I went to get the reversing engine ready, to work the main engines the force of the collision knocked me off my feet.

Q. You then were not able to stop the immediate motion of your engines?

A. No, I was thrown about eight or ten feet as near as I can guess on the starboard boiler jacket and cut my arm, and was lying partly on my back.

Q. You say you cut your arm? A. Yes, sir.

Q. From the fall you received?

A. The force of being thrown over against the starboard boiler jacket.

Q. Show the Court where your arm was cut?

Mr. NEUMANN.—That is not necessary, it has nothing to do with the case.

The COURT.—He can show it if he wishes to.

The WITNESS.—(Does so.) There is the cut.

The COURT.—You were thrown down by the collision and hurt?

A. Yes, sir.

Mr. McCLANAHAN.—After receiving the telegram to reverse and stop your engines at full speed was it possible to have completed that order before the collision?

A. No, sir.

Q. Did you or did you not make an effort to comply?

A. I did.

Q. Where did this telegram come from?

A. From the bridge.

Q. How long does it take to come from the bridge to the engine room?

A. Instantly on taking hold of the lever.

Q. How is this telegram shown in the engine room?

A. A dial indicating, full speed ahead and half speed and to stop and the same ahead.

Q. All that being indicated on the dial?

A. On the dial.

The COURT.—Then it is by electricity?

A. No, sir, nothing but a wire gear.

Q. It is done by a wire? A. Yes, sir.

Cross-Examination of JAMES SUTHERLAND.

Mr. NEUMANN.—Were you a witness in the case of Hinds et al. vs. The Wilder Steamship Company before Judge Silliman?

Mr. McCLANAHAN.—I object on the ground that it is irrelevant, immaterial, and incompetent.

Mr. NEUMANN.—Were you a witness in the case of Hinds et al., vs. The Wilder Steamship Company when this case was brought, when the case was tried about the collision? A. No, sir.

Q. Did you appear when that trial was on?

A. No, sir.

Q. Were you here at the time the trial took place?

A. I can't say.

Q. While the trial was taking place?

A. I have been on the vessel, I have been on the "Claudine every trip.

Q. The "Claudine" comes to Honolulu.

A. Yes, sir.

Mr. NEUMANN.—I want to know whether that man was subpoenaed at the former trial?

Mr. McCLANAHAN.—I will admit that he was not, and I also state that it is immaterial.

Mr. NEUMANN.—(To the Witness.) Did anybody communicate with you or tell you that you would be needed there? A. I left that to my counsel, No, sir.

The COURT.—Did you hear the whistle when it blew that night on the "Claudine"? A. I did.

Q. How long before this?

A. Well I can't exactly say quite a little time.

Q. Before this notice from the bridge to stop and back?

A. They followed very closely. They followed very close.

Q. Well, about how long?

A. Well, with correctness I cannot hardly say, I cannot correctly answer that, it is so long ago, it wasn't a great while.

Q. Well, I know not a great while, was it five minutes or one minute?

A. I can't answer whether it was one minute or five or three minutes.

Q. Or whether two minutes?

A. Yes, sir, I should judge that it was.

Q. Now, after this command was given you, and before you executed it, this command to stop and reverse, the ship struck, did it not? A. Yes, sir.

Q. And while you were holding the lever you were thrown over pretty hard? A. Yes, sir.

Q. That is the fact, is it? A. Yes, sir.

Redirect Examination of JAMES SUTHERLAND.

Mr. McCLANAHAN.—Do you remember when the plague was here in Honolulu? A. Yes, sir.

Q. Did this collision occur during the plague time?

A. About that time.

Q. Did the former trial of this case take place during the plague time and for how long?

A. I can't remember.

Q. Have you ever been spoken to about it in any

manner prior to week or ten days ago about being a witness in this case? A. No, sir.

Testimony of J. F. HILIBUS, called for the libelee; sworn.

Mr. McCLANAHAN.—What is your age, occupation and place of residence?

A. My age is thirty-nine years on the 23d of this month.

Q. What is your occupation?

A. I am now master of the Government tug "Elehu."

Q. And your place of residence? A. 124 Liliha.

Q. Were you captain of the "Hawaii"?

A. Yes, sir.

Q. Were you captain of the "Hawaii" during the months of December, 1899, and January of 1899?

A. You refer to the "Kilauea"; the steamer "Kilauea" running to Hawaii?

Q. I refer to the time when the "Claudine" run into the "William Carson."

A. No, I am captain of the Government tug "Eleu."

Q. Did you assist in bringing the "William Carson" in nearer to the Oahu Island? A. Yes, sir.

Q. With your tug? A. Yes, sir.

Q. Will you state Captain, if you can from these models; where the line was made fast to the "William Carson"?

A. She had a quarter chock, it was passed in over that and made fast, passed through a hawser pipe, and put on the bits on the quarter.

Q. On her port side? A. Yes, sir.

Q. What are the bits?

A. Two pieces with a cross piece of hard wood, one on each side.

Q. How was she lying?

A. On her starboard beam. She was lying over, her stern was up, clear this part, that you could see her, the yard was out of water; her head was down—I got her fast about here (showing).

Q. Now, would the line fasten here, on what stern, the port stern on her port quarter and then you proceeded to haul her to Honolulu?

A. About Diamond Head, on account of the current.

Q. Will you state to the Court how this vessel proceeded through the water, how you pulled her?

A. She was going like that, and when I got headway on her, she dragged more, she seemed like she wanted to take a turn; I think it was the fore and aft sails and the the jibboom, they were hauled to the starboard, the sheets didn't carry away, there was water going in there that wouldn't let her go, they acted like a rudder to her.

Q. She followed you at an angle? A. Yes, sir.

Q. What angle?

A. That is about her position—

Q. She followed you at about that angle, a quarter about?

A. Here is the tug, heading this way, this is the tug, the position of the tug, that was in about her center, the hawser laid from her stern quarter, from the bits on deck, that was almost in the center, and the vessel came in about this way (showing).

Q. If you know, about what angle did she take?

A. She was about like that (showing). (The witness shows at about the angle of forty-five degrees.) She may have varied a little, I wouldn't stake my life that it was a quarter or forty-five degrees.

Mr. McCLANAHAN.—Was it approximately that?

A. Yes, sir; that part of the end was straight.

Q. Did she follow in the wake of the tug towing her, with her masts first; how was her masts?

The COURT.—Just ask how she lay when she followed the tug.

Mr. McCLANAHAN.—He has showed the Court how she lay, but I want it on the record, that she lay as he has testified, that her masts were pointing toward—

The COURT.—Let him tell it.

The WITNESS.—After maneuvering, we got hold of the vessel hooked under the stern and took a turn around, the line was put in a small—a man went on the vessel pulled that wire through that pipe hole, and it was taken to the bits, and then it was taken to the tug again and then we began to tow, and she was dragging that way (showing), I tried to get her canted around.

Q. She followed you straight?

A. Yes, sir; you understand the vessel came this way (showing), they got her in the center of the deck, of course she would not follow direct, she never changed her course, her position.

Q. Were the masts out of water?

A. No, sir, under the water; she was kind of twisted

down with her bow, and this part, part of her quarter was out of water.

Q. This part was under water; we could see a part of the center and now once in a while it was smooth sea.

Q. In point of fact she did not follow you straight?

A. No.

Q. (To the Court.) That is all at the present time, but I shall ask the privilege of calling Mr. Hilibus on another point.

Cross-Examination of J. F. HILIBUS.

Mr. NEUMANN.—Can you kindly show to the Court exactly what was out of water, you were showing here to the spanker rigging?

A. Yes, sir, that is the rigging.

The COURT.—What do you call the last end of that vessel?

A. The stern.

Q. From the stern to the spanker rigging?

Mr. NEUMANN.—That was out of water?

A. If you had the line marked in there I could tell you exactly.

Q. It was out of water?

A. Yes, sir; it was all out of water up to the main mast.

Q. The part that was out of water was from the stern up to the spanker rigging?

A. Yes, sir, about here (showing), I can't say exactly from the stern, they might mean all of it. The fore part of the taff rail on the port side up to about here

(showing the spanker rigging) some times you could see her name when the water was smooth, I could see a portion of the name part of the time.

Q. Now, I want to ask you what day it was that you saw this vessel, when you got fast to her?

A. What day?

Q. Yes, sir, what date? A. Wednesday.

Q. Can you give us the date of the month?

A. It took place on the 27th of December, '99.

Q. How long was it so far as you know after that collision?

A. The collision happened the night before on Tuesday.

Q. And then it was the following day?

A. Yes, sir.

The COURT.—You went there the next day?

A. Yes, sir.

Q. Will you tell us please at what time of day that was, if you could place the hour?

A. I think I made fast to her nearly one o'clock, we just got lunch.

Redirect Examination of JAMES F. HILIBUS.

Mr. McCLANAHAN.—Did you see the deadeyes on the port side above the water, the dead lights?

A. Yes, once in a while the water, the air would force the water out, when there was a little movement.

Q. How many dead lights did she have there?

A. I can't tell you that.

Q. What dead lights were they? A. Cabin.

Q. How large were they?

A. Well a vessel of that size would have about six or eight inch lights.

Q. Show the Court where those dead lights were on the "William Carson"?

A. Right in here (showing.)

The COURT.—On all sides?

A. On both sides.

Q. But you only saw the port side?

A. Yes, sir, I saw these lights.

Q. But you didn't see them on the starboard side?

A. No, sir; the entrance of the air would force the water out of the cabin.

Mr. McCLANAHAN.—Did you see the other light box? A. No, sir.

Mr. McCLANAHAN.—Will now read the testimony of—

NUNULU, (K), being duly sworn, testified as follows:

Direct Examination.

(By Mr. McCLANAHAN.)

Q. Were you one of the wreckers out at the "William Carson"? A. Yes, sir.

Q. Did you see the mizzenmast and her sail at that time under the water? A. Yes, sir.

Q. Did you see it before the sheets were cut?

A. Yes, sir.

Q. Was the sheet at that time taut or loose?

A. Both sheets were taut, that is the sheet and the guy.

Q. The boom pennant was taut and the sheet was taut? A. Yes.

Q. How far out over the rail did the boom stand in that position? A. About five feet.

Cross-Examination.

(By Mr. NEUMANN.)

Q. How do you know it was five feet?

A. From the apparent distance it showed to my sight.

Q. Just step down here and show to the Court what was over the rail?

A. Both sheets were taut, the sheet and the guy were taut so that it extended to about where my hand is.

Q. The mizzen sail was about parallel with the spanker mast sail, was it? A. Yes.

Q. Just about? A. Yes.

Q. How was the sail of the main mast?

A. About the same, about the same as these other sails.

Q. How did you take your observation of that point where it stuck out four or five feet?

A. I was in the water, in the sea.

Q. On the outside of the vessel? A. Yes.

Q. On the starboard side? A. Yes, sir.

Q. And there you saw that in that way?

A. Yes, sir.

Q. Did you notice where the guy was fastened, in what part of the vessel? A. Yes, sir.

Q. Where was that fastened?

A. It is where it is shown there on that model, it was

a wire rope running to a block, and the block had a rope through it.

Q. Where was the wire rope fastened?

A. Right where the rigging was, right there.

Q. Right there at the rigging?

A. Yes, on this back stay.

Q. Where the back stay is? A. Yes.

Q. How was it fastened? A. With a hook.

Q. And what was done with reference to the back stay of the main mast shrouds?

A. It was spliced on the hook, and the hook was hooked on right where the rigging is.

Q. What other fastening was there beside that?

A. That is the only one that I know about.

Q. You saw them all? A. That is all I saw.

Q. If there had been any other fastening you would have seen it?

A. I could not say I could recognize all that was there because I was in a hurry, I could see a hook there.

Q. Was that hook between the last rope of the rigging of the mizzenmast and the next one, or was it outside of it?

A. It was another iron which seemed to be like a ring and bolt on the rail where it was fastened.

Q. Then it was not fastened to a hook, what were you saying about a hook?

A. It was hooked on to the pennant, and then the hook was hooked on to a ring set in the railing?

Q. Please show to the Court the exact place where that ring was? A. There.

Q. Was the ring on the inside of the shrouds?

A. No, it was a little inside, about the center of the rail.

Q. Where you showed us with your finger is that between the first and the second shrouds?

A. No, back of the shroud, aft of it.

Q. Aft of the shroud?

A. Yes, about half a foot aft..

Q. Six inches? A. Yes.

Q. How about the mainsail, how was that on the vessel?

A. It was made fast in the same manner as the mizzensail.

Q. That is to say by the sheet and also by the guy?

A. Yes, just exactly.

Q. And where was the guy of the mainsail fastened?

A. Just in the same manner as the mizzensail.

Q. In the same manner, but where was the guy fastened? A. It was fastened forward there.

Q. Show the Court where it was fastened?

A. It was also fastened on the rail by a hook and a block on the rail.

Q. Where was that block on the rail with reference to the fore shrouds?

A. About half a foot in advance of the shrouds.

Q. Of which shrouds? A. Where I point.

Q. You point now to the shrouds of the mainmast, show to the Court where it was?

A. There, about half a foot beyond.

Q. Half a foot forward of the main shroud?

A. Yes.

Q. Did both of those guys go on the outside of the main shroud? A. Yes, outside.

Q. Both were outside? A. Yes.

Q. Did the main guy have also a wire rope the same as the other? A. Yes.

Q. Just the same? A. Yes.

Q. Fixed the same? A. Yes.

Mr. McCLANAHAN.—I will now read the testimony of—

KAOO, (K), being duly sworn, testified as follows:

Direct Examination.

(By Mr. McCLANAHAN.)

Q. Did you have anything to do with the dismantling of the "William Carson"? A. Yes.

Q. On what boat were you?

A. On the "Hawaii."

Q. Do you remember of seeing the starboard lamp of the "William Carson"? A. Yes.

Q. Would you know it if I should show it to you?

A. Yes.

Q. Is this it? A. Yes, that is it.

(Defendant here offered in evidence the lamp, identified by the witness.)

By Mr. NEUMANN.—I object to the introduction of it, I wish to examine this man first and see how he knows it.

By the COURT.—The ruling of the Court is reserved for the time being.

Cross-Examination.

(By Mr. NEUMANN.)

Q. How do you know it is the lamp?

A. I have seen that lamp before when we took it off the ship.

Q. Who took it off?

A. We all took a hand in taking it off the ship and giving it to the captain.

Q. How many of you?

A. Quite a number of us, ten of us were working on the ship.

Q. I am not asking who were working on the ship, but, who was working on the lamp taking it off?

A. It was a half white man who took it off from the ship and carried it, we saw him take it to the captain.

Q. You saw a half white man take it to the captain, and from that you know it is the lamp? A. Yes.

Q. What was done with it?

A. He looked at it and examined it.

Q. Who did. A. The captain.

Q. Where were you when the captain examined it?

A. *I was right.*

Q. And saw him looking at it? A. Yes.

Q. Have you got a green light on the "Hawaii"?

A. Yes.

Q. Like this or different?

A. I could not tell you, they were all alike, all are green, I guess they are all green.

Q. Is that the only way in which you know this is the light taken from the "Carson," because it is green?

A. No, it is the appearance of the light and that rag around it.

Q. That is what you know it by? A. Yes.

Q. Did you see this light taken out of the light box?

A. I saw it when taken from there and it had that rag on it then.

Q. Do you know who put that rag on there?

A. No, I don't know.

Q. But you can identify it as being the same one taken out of the light box?

A. Yes, I can identify it.

By Mr. NEUMANN.—My objection is withdrawn.

By the COURT.—The lamp is received as one of the exhibits in the case.

By Mr. McCLANAHAN.—If the Court please, we now desire to ask for a continuance of this case until the return of Captain Weisbarth, or until the Captain is brought into Court; Captain Weisbarth is a very material witness in this case.

By the COURT.—It seems to me that you should go on and finish your case before any ruling is made by the Court on the motion for continuance.

Mr. McCLANAHAN.—I will now read the testimony of—

Mr. ALEXANDER FISHER, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. McCLANAHAN.)

Q. What was your position on the "Claudine" on the night of the collision? A. Quartermaster.

Q. What was your duty at the time of the collision?

A. I was at the helm.

Q. When did you go to the helm?

A. Ten minutes to eight.

Q. When did your watch commence?

A. My watch commenced at twelve o'clock.

Q. When did it end?

A. My watch was from six to eight, my proper watch.

Q. In the afternoon? A. In the evening.

Q. How did you happen to be on watch at the time you were that night?

A. Because we left about ten minutes to seven, and I went to have supper.

Q. How did you happen to be at the wheel when the collision took place?

A. The other fellow went down to have his supper so I was at the wheel taking the place of the other man while he was taking his supper.

Q. Tell us the story of the collision as you remember it? What you did and what you saw?

A. I went to the wheel ten minutes to eight, I got my course from the other fellow, Antone, I kept that course until I got orders from the second mate to hard port, light right ahead, and he gave one small blast of the

whistle, and by and by the captain came up and gave orders hard to starboard; I starboarded, and kept it until we struck; I was starboard when she struck.

By Mr. NEUMANN.—Q. You had the helm starboard? A. Yes.

By Mr. McCLANAHAN.—Q. Did you see any light at all? A. No.

Q. Why not?

A. I never looked for any lights, I was watching my steering.

Q. What is the difference between the standard compass on the bridge, and the compass in the wheel house?

A. I could not say, half a point, or maybe three-quarters of a point.

Q. There is a difference? A. Yes.

Cross-Examination.

(By Mr. NEUMANN.)

Q. What time did the collision take place?

A. As far as I can judge it was about twenty minutes to nine o'clock.

Q. The orders which you have just now stated in your testimony were the only orders which you got, or, did you get any others?

A. No, those were the only orders I got.

Q. The second mate gave you orders hard to port?

A. Yes.

Q. Where was the captain at that time?

A. I don't know.

Q. Was he on the bridge?

A. I don't know, I cannot tell.

Q. You could not have seen him if he had been on the bridge? A. No, sir.

Q. You were attending to your business?

A. Yes, sir.

Q. At the time when he gave the command hard to port, you did it? A. Yes, sir.

Q. How soon after was it when the captain gave a direction to starboard helm, as near as you can remember?

A. I could not say how long it would be, it might be from seventeen to twenty seconds.

Q. In speaking about that, you were going this way, we will call this course east three-quarters south?

A. My course was east to south three-quarters south.

Q. Very well, you went along this course until you got orders to port the helm? A. Yes.

Q. Upon which you ported the helm and brought her this way? A. That is right.

Q. Do you know how far you were from the "William Carson" at the time the captain gave you the order to put her to starboard? A. No, I don't know.

Q. You saw no light? A. No.

Q. You paid no attention to anything except the compass? A. No.

Q. And the wheel? A. No.

Q. And you cannot say whether or not there was any green light seen? A. No.

Q. Where was the first mate at that time?

A. I don't know.

Q. Didn't you hear him?

A. No, on the bridge; I heard the captain give hard to starboard.

Q. Was anything said about a green light?

A. Not as I remember.

Q. Not that you remember of? A. No.

Q. You remember of nothing of that sort being said?

A. No.

Q. All you know is that the Captain gave you orders to starboard?

A. Yes, I was starboard when she struck.

Q. At that time she struck? A. Yes.

Q. Where did she strike the other vessel?

A. I don't know.

Q. You don't know what part of her? A. No.

Q. Did you find out afterwards?

A. No, I never asked.

Q. That is all that you know? A. Yes.

Redirect Examination of ALEXANDER FISHER.

Mr. McCLANAHAN.—Can you hear a conversation in the wheel house when attending to your duty, that is taking place on the bridge?

A. When on the starboard side or the port side I cannot hear anything.

Q. Is it possible to hear a man talking on the bridge?

A. If standing right over the hole I might hear.

Q. Otherwise you would not? A. No.

The COURT.—What was your answer?

Mr. BALLOU.—If he was to port or starboard of the hole he could not hear.

Mr. NEUMANN.—Did you at that time or before the collision get any order whatever, or was there any bell rung?

(Objected to on the ground that it had been gone into. Objection overruled.)

Q. Any order given to slow the speed, slack the speed or stop? A. I heard nothing.

Q. You would have heard the bell?

A. Sometimes I hear it and sometime not.

Q. Are you deaf?

A. No; if there was any wind I could not hear.

Q. At any rate you did not hear any signal to slacken speed or stop? A. No, sir.

Q. At any time in the evening before the collision?

A. No.

Mr. McCLANAHAN.—Q. Did you have anything to do with regulating the speed of the boat?

A. No, sir.

Q. From where is that done, from where is the speed regulated? A. From aft.

Q. Who is it and where is the speed regulated from?

A. From the engine.

Q. Who gives orders to the engineer?

A. Perhaps the telegraph.

Q. What is the telegraph.

A. It is on top of the bridge.

Q. That connects with the engine room? A. Yes.

Q. And the man on the bridge attends to the telegraph? A. Yes.

Q. He could telegraph and you not know anything about it, couldn't he? A. Yes.

Mr. NEUMANN.—You would or would not know about it.

A. No, sir.

Q. You would not?

A. No, because I could not see the telegraph.

Q. Who was on the bridge of the vessel at the time you were ordered to port helm?

A. The second mate.

Q. He gave you that order himself? A. Yes.

Q. Was there any one else there to give different orders? A. No.

Q. You did port the helm? A. Yes.

Q. And you say in seventeen or twenty seconds afterwards the captain—

A. I will not be sure about seconds.

Q. The captain told you to starboard the helm?

A. Yes.

Q. Had you put the helm to starboard before she struck? A. I was starboard when she struck.

Q. At the time she struck? A. Yes.

Q. You felt the strike? A. Yes.

Q. Had she already obeyed the helm?

A. Yes, I think she was starboard then.

Q. That was the time she struck the other vessel?

A. Yes.

Mr. McCLANAHAN.—From the time you got the order to starboard from the captain, could that vessel have been stopped, or could her speed have been so lessened as to have avoided a collision?

A. I don't know, sir.

Q. How many seconds was it between the order given to starboard and the time she struck?

A. It seemed to be from seven to seventeen seconds. Seven seconds. I will take it back from porting the helm until she starboarded.

Q. Would it take between seven and seventeen seconds? A. Yes.

Q. I am asking how long it would take from the time the order was given to starboard and the collision?

A. When he gave me to order to starboard, I should judge about seven seconds.

Q. After the order to starboard was given before she struck? A. Yes.

Q. Seven seconds after the order to starboard was given she struck? A. Yes.

Q. When I say, "ready" and snap my finger tell me when seven seconds have expired? A. Yes.

Q. Tell me by saying, "now"? A. Yes, "up."

Q. "Up" and seven seconds?

A. I could not guess.

Q. When I snap my finger you wait seven seconds, and tell me when the seven seconds have expired, do you understand? A. Yes.

Q. I will let it go.

Mr. McCLANAHAN.—I will now read the testimony of—

J. W. McALLISTER, being first duly sworn, testified as follows:

(Mr. McCLANAHAN.)

Q. What is your position on the "Claudine"?

A. I am chief officer.

Q. Were you the chief officer on the night of the collision with the "William Carson"? A. Yes, sir.

Q. Tell us your story about that collision?

A. As far as I know I heard the whistle blow, she left about half past six o'clock, I think about eight o'clock I left the deck, I did not go directly to my room, but directly after I was reading my paper in my room, and I heard the whistle blow, our steamer whistle and I came on deck.

Q. One whistle?

—. Yes, I came on deck up to the starboard companion way on the passenger deck and looked around but continued on until I got to the companion way going up *the;* I went on the bridge and as soon as I went up there I saw Captain Weisbarth standing by the telegraph, and I asked why they blew the whistle and I did not get any reply, but, I happened to see a green light flashing up; I said, "there is a green light, what are you doing on that side," and just then some one said, "hard over, hard over," and with that I left or started to leave, and about the time I go to the companion way half way down the steps she hit; I continued on forward.

Q. The "Claudine" hit what?

A. The vessel ahead of us.

Q. Were is your cabin on the "Claudine"?

A. She is down below.

Q. Will you come here and show us where it is?

A. It is about here on the port side.

Q. How do you reach it?

A. By going down either companion way there is one companion way here, and another about on a line with it on the other side.

Q. One on either side of the cabins? A. Yes.

Q. And the passenger deck? A. Yes.

Q. How near to the companion way leading to the main deck is your room, is it not nearer the port companion way? A. Yes.

Q. How near is it to the port companion way?

A. About as far as from here to the corner.

Q. How many feet is that?

A. Fifteen or twenty feet.

Q. Where is the captain's room?

A. It is in here, the first door from the pilot house on the passenger deck.

Q. Up what gangway did you come, on the starboard gangway? A. On the starboard gangway.

Q. Did you go from that gangway on the starboard side to the little gangway leading up to the bridge at once? A. Yes.

Q. Where were you standing on the bridge when you asked the question, "why did you blow that whistle"?

A. The telegraph stands about here, and I was about here.

Q. What have you been doing from the time you reached the top of the companion way and landed on the bridge to the time you moved amidship?

A. I was walking and looking to see if I could see anything that answered that signal.

Q. Looking to see whether you could see the cause for that signal?

A. Yes. I saw nothing until I asked the question why it was blown, and then I looked at the same time and saw this light flash up pretty near ahead, not exactly ahead, but abreast of the fore rigging on the port side.

Q. Was that a place where you had been looking prior to the flashing of the light?

A. Yes, I was looking around the horizon.

Q. You saw nothing in that place until the light flashed? A. No, sir.

Q. Prior to the flashing of the light, did you see any sails or the lines of any vessel? A. No, nothing.

Q. Absolute darkness? A. Yes.

Q. Was it a black night?

A. It was a pretty dark night, yes.

Q. You say you were standing a little to the starboard, side of midships? A. Yes.

Q. When you saw that green light, where did you go?

A. I stood there probably for a second, and then I saw the sails, and then I went further down the starboard companion way and further forward; I went down the other companion way forward again.

Q. What other companion way?

A. It don't show there.

Q. On the starboard side under the companion way leading from the bridge to the passenger deck there is another companion way? A. Yes.

Q. And you went down there? A. Yes.